

# BANKING IN NEW ZEALAND

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## FOREWORD.

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THIS volume, entitled "Banking in New Zealand," will be welcomed by a wide circle of readers.

Among other interesting features, the book contains an account of the historical development of our system of banking and the rise and growth of individual banks, both past and present. It is now many years since the late Professor H. D. Bedford wrote a thesis dealing with the history of banking in New Zealand, but unfortunately only a precis of his paper was printed, and even that is not easily accessible: hence the need for the present narrative, which brings banking history up-to-date and includes a description of the constitution and functions of the recently created Reserve Bank of New Zealand.

The law and practice as to Banking, Bills of Exchange, Balance Sheets, Negotiable Instruments, and similar commercial documents are set out fully and clearly in a way that will prove extremely useful to students and practical bankers.

Elsewhere in this book the reader will find discussed the wider questions of Credit and Currency, which are in the very forefront of public controversy at the present time. In dealing with such questions as the Exchange-rate, the authors have been at pains to set out, impartially, the conflicting views of different schools of thought.

This treatment of general principles is of great importance to all those engaged in banking, because the Great War, and later events, have made it clear that rule-of-thumb methods are no longer sufficient, and that the practical banker must familiarize himself with a wider background and with the underlying principles of monetary science.

There is, of course, a vast literature already in existence on these subjects, but over-seas' publications are not always

a safe guide to actual conditions and existing practice in New Zealand. In short, this book should prove of great value from the point of view alike of the student, the banker, and the citizen interested in public affairs.

It only remains to add that the names of the authors will readily be accepted as a guarantee that the work has been done with great care and authority.

Mr. B. A. Moore is a banker of ripe and varied experience and at present occupies the responsible position of Manager of the Wellington branch of the Bank of New Zealand. He is also a qualified accountant.

Mr. J. S. Barton, C.M.G., S.M., is well known both as an accountant and lawyer of distinction, and also as the author of several text books dealing with accountancy and legal subjects. Mr. Barton recently presided as Chairman of a Royal Commission which was set up to investigate and report upon certain tendencies and developments within the Dominion relating to the promotion of companies.

The association of these two gentlemen as authors in the preparation of this important work has been most suitable in every way.

*W. Downie Stewart*

Dunedin,  
1st March, 1935.

## AUTHORS' PREFACE.

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THIS work was undertaken on the initiative of the New Zealand Bank Officers' Guild, Inc., and the idea originated with and was largely inspired by its General Secretary, Mr. H. P. Mourant. It was believed by the Executive of the Guild that students of banking, especially candidates for the Diploma in Banking, were handicapped by the absence of a text book dealing with banking in New Zealand, a lack that was not adequately compensated for by numerous books relating to English and Australian banking law and practice.

As, however, the project developed, the authors, who had been asked by the Guild to undertake the work, considered it advisable that the scope of the volume should be widened with the object of making it appeal not only to bankers and students of banking, but to business men and general readers also. The authors felt that the times definitely called for a clearer knowledge and understanding of the principles which govern banking and sound finance, both public and private. It is hoped that this volume will prove to be a not-unworthy contribution towards this highly desirable end.

The historical section should appeal to students of New Zealand history, for information as to early banking and the currency difficulties of this country has been obtained only by much research.

The chapters on such practical subjects as "Exchange," "Reserve Bank of New Zealand," "Overdrafts and Securities," the "Functions of Banks" and the "Administration of Banks," should be useful and informative to a wide range of readers. The more technical chapters on "Bills of Exchange," "Constitution of Banks," "Balance Sheets," etc., are, however, set out in plain language which the layman should be able to follow readily. Indeed, throughout the work it has been the earnest endeavour of

the authors to avoid technical phraseology, and so to deal with the various subjects that "the man in the street" may, without special effort, understand the contents of this volume.

The authors' thanks are due to many who have kindly given assistance, especially in connection with the historical section. Included in these are the chief officers of the various banks, who have allowed access to records; Dr. Guy H. Scholefield and Mr. Johannes Andersen, for permission to search records in the Parliamentary Library and the Turnbull Library respectively; and Mr. A. Thomas, of the Dunedin Savings Bank, for valuable information with regard to the history of the Savings Banks. An acknowledgment is due to the Government Printer for permission to reproduce the text of the "Reserve Bank of New Zealand Act, 1933" and its amendment (Part I of the "Finance Act, 1934"). Voluntary service has also been given by members of the Bank staffs, in collecting data and typing much of the authors' manuscript. To these grateful thanks are tendered, and also to others whose encouragement over some three and a half years of labour has been definitely helpful.

B. A. MOORE.

J. S. BARTON.

Wellington,  
February, 1935.

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# BANKING IN. NEW ZEALAND

## CHAPTER I.

### HISTORY OF BANKING IN NEW ZEALAND.

#### (1) Introductory.

WE think there is little doubt that the average New Zealander whose life has been spent, and whose education has been received in New Zealand, has as a rule a far better knowledge of the history of England than he has of the history of his own country. If he has any knowledge of the latter at all it usually consists of a hazy idea as to the earlier history of the district surrounding his birthplace, and some general knowledge to the effect that settlement in New Zealand commenced in the early 'forties with the arrival of the first colonists brought out from England under the auspices of the New Zealand Land Company. It is probable that he would learn, for instance, with some surprise that some 20 years before the arrival of these colonists, the Maori Chief Hongi visited England and was received by King George IV., and that many events of deep historical interest connected with earlier settlements took place during the quarter of a century prior to the more formal settlements referred to above.

In the same way, it is probable that the average business man in New Zealand, who gives the matter a thought, has the impression that banking in New Zealand commenced somewhere in the 'sixties when the Bank of New Zealand, the Bank of New South Wales, and the Bank of Australasia made their appearance, though he would also no doubt be aware that the Union Bank of Australia was established here before that date. It would probably come as a surprise to him to learn that the New Zealand Banking Company was established in 1839, with Head Office at Kororareka (now Russell), in the north of the North Island—the first capital of New Zealand, that a State Bank with sole right of note issue existed in the 'fifties, that

apart from the Banks first mentioned, a Bank of Otago, a Bank of Auckland, a New Zealand Banking Corporation, and a Commercial Bank of New Zealand, each had a brief period of existence, and in addition, the Oriental Bank Corporation played some part during the 'fifties in the banking history of this country. Apart from all these ventures, various private Savings Banks, commencing with the Wellington Savings Bank in 1846, were well established before 1860.

We hope that students and bankers may find something of interest in the brief outline given herein of those early banking struggles and troubles which were part and parcel of the growing pains of this young country.

## (2) Early Currency Difficulties.

In dealing with the early history of the Bank of New South Wales (see page 89), we have touched on the currency troubles of the settlers of Botany Bay, a convict settlement near Sydney, New South Wales. It was from these troubles that there emerged the establishment of the first bank in Australasia, the Bank of New South Wales. Whilst the early settlers in New Zealand suffered much inconvenience from this same scarcity of currency, it has been very difficult to find much reference to these troubles in the many records left by early historians, in spite of the wonderful wealth of literature available to the student dealing with the settlement of this country.

The late Dr. H. D. Bedford wrote an interesting article on "The Monetary Difficulties of Early Colonisation in New Zealand," which was published in the *Economic Journal* of June, 1916, in the course of which he states that—

"there being always a balance payable by Great Britain to New Zealand, Governors were in the habit of drawing bills on the Imperial Treasury in anticipation. These bills were sometimes discounted by the local banks, the Union Bank and the New Zealand Banking Company, and sometimes circulated as currency when they were accepted by creditors of the Government in payment. They bore interest from 5% to 8%."



Besides negotiating bills on the British Treasury, the Government paid for much of the land it purchased from the Maoris by land scrip, which consisted of promissory notes of the Government charged upon the Colonial Exchequer and payable as funds became available. In 1856 it was stated in the House of Representatives that there was afloat at that date £100,000 of land scrip circulating as currency.

In 1844 Governor Fitzroy, owing to urgent need of money, issued, without Imperial authority, Government debentures to pay debts, a move which gave rise to much local misgiving.

“The Colonial Treasurer on going to his office one morning found the intended issue characterised by the following:—

NOTICE—This shop to open shortly with a prime stock of bran new debentures.

The debentures were dubbed ‘Government rags.’”

(Bedford).

They were selling at a discount when they were proclaimed legal tender, and the Governor continued to issue them in amounts of 10/-, 5/-, and 2/- to provide a circulating medium. But the Ordinance making these notes legal tender did not receive the Royal sanction, and when Governor Sir George Grey arrived in November, 1845, he was supplied with £15,000 by the Home authorities for the purpose of redeeming these debentures. He discovered, however, that the amount issued amounted to nearly £50,000! He found it impossible to redeem them all, and offered to pay one-fourth in specie and the remainder in funded (irredeemable) debentures bearing interest at 8%. Apparently the offer was accepted.

In 1847 Lord Grey, of the Colonial Office, sent to Governor Grey an important despatch urging the establishment of a State Bank for the issue of convertible bank notes.

“The despatch was viewed with misgiving, and indeed, alarm, by many of the leading merchants of Wellington, and they addressed a memorial of protest to the Governor.

They plainly manifested their utter lack of faith in the convertibility of Government paper money." (Bedford).

In 1847 the note issue of the Union Bank of Australia, which had opened in New Zealand in 1840, was about £15,000, and there was no other note issuing authority at this time.

### **(3) Colonial Bank of Issue.**

In spite of the above protest, the Colonial Bank of Issue was established in 1850 with sole right of note issue, and carried on business in Auckland and Wellington. Its functions were limited to issuing bank notes of £1 and multiples of £1. Notes were issued only for cash and redeemed on demand in cash. The right of the Union Bank to issue further notes was abrogated. The "*Colonial Bank of Issue*" returns were published in the *New Zealand Gazette* from 1851 to 1856. The coin held against the notes was about one-third—generally more—the balance being invested in short-term and liquid securities, including British Consols. The notes were legal tender, and the Bank's last return in August, 1856, showed a note issue of £46,173, with a gold and silver holding of £15,173. The Bank never gained the confidence of the people, and by 1855 appears to have been in general disfavour.

"The burden of the complaint against the Colonial Bank of Issue was that the surplus funds were invested in British Securities at 3%, while the Colonial Government was borrowing at 8% and the Provincial Governments at 10%. It was not to be expected that colonists would look with equanimity on the withdrawal of many thousands of pounds from their own country to be invested in London at a low rate of interest while they were borrowing from London at a rate of 100% to 200% higher." (Bedford).

On 29th July, 1856, an Act was passed providing for the winding-up of the Colonial Bank of Issue and for the immediate redemption of the Bank's notes, and a "Gazette" notice dated 23rd September, 1856, proclaimed the winding-up of



No 4000  
 Bay of Islands St. John's N.S.  
 The Manager of the New Zealand Banking Co.  
 Pay Messrs. Bayard & Totten. or Bearer  
 Seven Pounds one Shilling  
 Yorking.  
 Gilbert H. Mair  
 £ 4. 1. 0.

Facsimile of a cheque drawn on the New Zealand Banking Co., Bay of Islands (Russell). The original document is printed on flimsy white paper. The rough edge on the left hand side was caused through the absence of perforation between the cheque and its butt. The cheque bears no stamp-duty, otherwise it is practically identical in style with the cheque form now in use.

the Bank. The notes were paid by the Union Bank of Australia, the "Bank Paper Currency Act, 1856," empowering the Union Bank to resume the issuing of notes. In the following year, the "Oriental Bank Corporation" was also authorised to issue notes.

Bedford says—

"The arrogation to the State of the monopoly of the note issue was a discouragement to the establishment of private Banks in the Colony. The settlers needed a paper currency, but they wanted equally the facilities which banks of deposit and discount afford. The functions of such banks the State Bank did not exercise, and private banks were loath to do so without the privilege of note issue."

So much for the first State Bank.

The currency of the early days included notes for small change issued by merchants, and considerable quantities of such notes for threepence and sixpence were in circulation. Copper tokens were also issued by merchants for one penny and twopence—one side with the Queen's head—the other with the name, occupation, and the address of the issuer.

#### **(4) Banks of the Past.**

##### **(a) New Zealand Banking Company.**

As already mentioned, the first purely New Zealand Bank to be established in New Zealand was the "New Zealand Banking Company," which was promoted in 1839 and commenced business at Kororaraka (now Russell), in the Bay of Islands, in 1840. Its headquarters were moved to Auckland in 1842. A most interesting relic of this Company and of the days in which it existed is the Minute Book of its Directors from 1841 to 1850 recording the transactions of the Bank from week to week. The Book is in the possession of the Head Office of the Bank of New Zealand. Its earliest entry is a Declaration of Secrecy signed by the Directors and by the Manager and Accountant at Auckland. The first meeting

recorded was held at "Woods Hotel, 4th August, 1841," the Directors being—

Matthew Richmond,  
Frederick Whitaker,  
W. C. Symonds,  
W. F. Porter,  
Dr. John Johnson,

and the first business transacted was an advertisement for the "Auckland Herald" stating that the Bank would "commence business on 20th inst. at Auckland at the Bank House in Princes Street." The advertisement also stated:—

*"Interest Charged.*

On Bills having not more than 60 days to run, at the rate of	10% per annum.
On Bills having not more than 100 days to run, at the rate of	12½% per annum.

*Interest Allowed.*

On Current Accounts on the daily balances at the rate of	4% per annum.
On deposit accounts giving 10 days' notice at the rate of	5% per annum.
Bills granted on the Commercial Banking Company, Sydney, at 1% premium."	

It was resolved at that meeting that—

"in the opinion of the Directors, Port Nicholson appears to be a place where such an extension (of the Bank's operations) could be made with propriety and advantage, provided such an extension meet with the views of the Colonists of that settlement."

and Messrs. Halswell, Mathew, and Dawson were deputed to visit Port Nicholson (Wellington) accordingly. There is no further record of the result of this visit, but apparently no branch was opened at Port Nicholson.

The minutes chiefly record the discounting of bills until 3rd March, 1843, when a drastic resolution curtailing the

No. 119  
 New Zealand  
 10th March 1841  
 £100-0-0 B.B. of ISSUEDS recd 1841  
 Three Months after date I Promise  
 to Pay William H. Russell or Order the Sum of  
 £100 here added and to be paid  
 at the New Zealand Bank  
 at the New Zealand Bank  
 Signed at  
 Gilbert Mair

Promissory note payable at the New Zealand Banking Co., Bay of Islands (Russell). Note the  
 similarity of the form of the document compared with promissory notes used in the present day.  
 Note also the absence of stamp-duty. The document was printed in Sydney, New South Wales.





authority of the Manager and Directors at Kororareka was passed, which resolution stated that—

“Contemplating with alarm the frightful amount of overdue paper exhibited by the late returns from the Branch at Kororareka, equal indeed to the whole paid-up capital of the Bank (£8,278), and observing at the same time with great pain that apparently little or no exertion is made to reduce that amount, the consequence of which state of affairs cannot but prove most disastrous, more than ordinary stringent measures must be adopted to remedy if possible this unhealthy state of affairs.”

Reference is also made to discounting further bills for parties whose previous bills were still unpaid, and to the inadvisability of assuming that “the mere deposit of title deeds constituted security.”

Frequent reference is made to shortage of funds in Sydney, the Bank's drafts on its Sydney agents, the Commercial Banking Company, being on one occasion dishonoured, this being due to Governor Hobson's draft on Sydney purchased by the Bank not being paid on presentation there, though it was eventually honoured.

In 1844 the troubles of the Bank came to a head, owing chiefly to the difficulty of collecting the past due bills of the Kororareka Branch, and the minutes of this time are mainly concerned with selling up the securities held for these bills. In 1845 it was decided to wind up the Company, and the Minute Book closes with the signed receipts in the book for 5/- per share distributed to shareholders, the last receipt being dated 2nd February, 1850.

The minutes are an interesting record of the methods of banking of those days, which chiefly consisted of discounting bills with or without collateral security, but frequently endorsed by other parties. Government transactions were a feature of the business, both by way of purchase of bills on Sydney, and by way of overdraft. The rate of interest charged the Government appears to have been 12½% to 15%!

Throughout the Bank's existence, Mr. Frederick Whitaker (afterwards Sir Frederick Whitaker) appears to have been the controlling influence. He was later prominent as a Director of the Bank of New Zealand.

**(b) Oriental Bank Corporation.**

In 1857 after the State Bank experiment referred to above had ended in failure, a London Bank, the Oriental Bank Corporation, with headquarters at Melbourne, opened branches in Auckland and Dunedin, but as stated on page 97, under the head of "Bank of New South Wales," the Oriental Bank's business was taken over by the Bank of New South Wales in 1861.

**(c) The New Zealand Banking Corporation, Ltd.—Commercial Banking Company of New Zealand.**

The New Zealand Banking Corporation was registered on 29th April, 1863, with a capital of £300,000, and in 1864 "continued as 'The Commercial Banking Company of New Zealand.'" (Condliffe—"New Zealand in the Making"). Its career was short, and it went down with many other weak concerns after, and as a direct result of, the London failure of Overend-Gurney on 10th May, 1866.

"It had not been established long enough for it to obtain assistance on credit by the time of the crisis and it had to suspend in consequence." ("Imperial Banks," A. S. J. Baster, London, 1929, p. 129).

At the time of its failure, its deposits were £38,000 and advances £97,000.

**(d) Bank of Otago, Ltd.**

The Bank of Otago, Ltd., was registered on 27th April, 1863; with a capital of £500,000, and was fairly successful, its chief business being in Dunedin where gold-buying in the 'sixties was a very profitable department of banking operations. By 1873 its note issue was £58,174, deposits £224,817, advances £373,647, but in 1874 it was absorbed by the National Bank of New Zealand, which had come into existence in 1872.

**(e) Bank of Auckland.**

The Bank of Auckland commenced operations in 1864 and was a local institution with a capital of £100,000 in £10 shares, which were called up to £6, but apparently it did not make much progress and could not compete with the recently established Bank of New Zealand. We learn from *The Daily Southern Cross* (Auckland) of 1st February, 1867, that at the half-yearly meeting held on 16th January, 1867, the Directors recommended a dividend of 10%, but an amendment was carried reducing the rate to 8% so that the Reserve Fund might be augmented. The Balance-sheet figures showed:—

Liabilities.		Assets.	
Capital .....	£58,086	Coin .....	£11,111
Reserve Fund .....	1,750	Govt. Securities .....	1,275
Deposits .....	28,607	Property .....	3,981
Notes in Circulation .....	8,937	Bills Discounted and	
Profit for half-year .....	2,954	Debts due to Bank	90,445

The Chairman said—"The Bank has not only kept its own ground, but has progressed and increased in strength." The last quoted sale of shares was at £5/10/-.

On 3rd April, 1867, however, the above-mentioned paper says—

"Yesterday the town was thrown into a state of considerable excitement by the announcement that the Manager of the Bank of Auckland had absconded."

It appears that, fearing the consequences of having made certain advances which were ill-advised and which he had hidden from the Directors by showing them under the head of "Specie," the Manager had taken passage on the mail boat, but was seen going aboard. He was later persuaded to come ashore again and "face the music." It was not a question of defalcations. However, his action resulted in the winding-up of the Bank, and the other Banks in Auckland appear to have taken over and liquidated the business between them.

**(f) The Colonial Bank of New Zealand.**

This Bank owed its inception chiefly to the jealousy of the people of the South Island of New Zealand, particularly

Dunedin, towards the influence of Auckland and London on the control of the only other truly Colonial banking institution in the Colony, the Bank of New Zealand. Dunedin and the South Island wanted a Bank "that would attack the virtual monopoly that had been created in the North Island" ("The Banking Institutions of Australasia"—R. L. Nash, London, 1890). The Hon. Matthew Holmes, M.L.C., of Dunedin, was primarily responsible for its promotion and was its first President.

The Prospectus was issued in 1874, Nominal Capital being £2,000,000.

The capital issued and paid up was £400,000. The Bank was moderately successful and paid a dividend of 3% in 1876, 6% in 1877, 7½% in 1878, 8% in 1879, 7% in 1880, 6½% in 1881, and thereafter 7%. By 1889 it had 27 branches in New Zealand and a branch in London. Its Deposits had reached £1,727,640, of which about £500,000 were contributed in London and Scotland, and the Reserve Fund was £50,000. At this date Hy. Mackenzie was General Manager, Wm. Watson, Inspector, and the Hon. George McLean, M.L.C., President.

In 1889 some negotiations took place for the amalgamation of the Colonial Bank with the Bank of New Zealand, but nothing came of these proposals at the time. In 1894, Mr. John Murray, on behalf of the Bank of New Zealand, again opened up negotiations, but Mr. George McLean, when consulted on the subject of the proposed "Bank of New Zealand Share Guarantee Act of 1894," advised the "Government not to uphold the Bank of New Zealand but to appoint the Colonial Bank as the bank for the Colony, and through its agency liquidate the Bank of New Zealand." (Parliamentary Report). Fortunately for the Bank of New Zealand this proposal was not adopted.

Further negotiations took place in 1894 for an amalgamation, not a purchase, and a scheme was outlined by the Colonial Treasurer, the Hon. J. G. Ward, but it was not acceptable to either Bank. In the Bank-note Issue Act of

1894, a clause was inserted prohibiting the amalgamation of the Bank of New Zealand with any other Bank without the consent of Parliament, though an amalgamation with the Colonial Bank was clearly contemplated. In 1895 negotiations were renewed, but the basis of the new proposals was the straight out purchase of the Colonial Bank by the Bank of New Zealand. Legislative sanction to the purchase was given in October, 1895, and it was completed later in the year.

Details of the purchase are given under the history of the Bank of New Zealand.

The Balance-sheet of the Colonial Bank at 31st August, 1895, which was the basis on which the purchase was completed, showed that

Paid-up Capital was .....	£400,000
(200,000 £5 shares paid up to £2)	
Reserve Fund .....	£65,000
Balance of Profit and Loss .....	£19,980
	<hr/>
Shareholders' interest .....	£484,980
	<hr/>

The assets included Advances to the amount of £1,731,549.

In the history of the Bank of New Zealand is shown the manner in which these advances were classified in the agreement under which the purchase of the Colonial Bank was completed. They were divided into four lists: A, B, C, and D. The "A" list, £926,197, represented accounts which were fully covered by securities and were accepted by the Bank of New Zealand at face value and paid for accordingly. The "B" list comprised accounts amounting to £604,695, and were carried on by the Bank of New Zealand on behalf of the Liquidators of the Colonial Bank, as provided for in the Agreement, for a period of two years, during which time the Bank of New Zealand had the right to take over the whole or part, subject to the deduction of amounts reserved against each account. The total of the list was £604,695, and the total reservation was £327,205. Before the two-year period expired, the Bank of New Zealand agreed to take over all the

accounts and pay £4,000, and the Colonial Bank loss on this list was apparently the difference between £4,000 and the £327,205. What profits, if any, the Bank of New Zealand eventually made out of these accounts cannot be ascertained.

The "C" list represented the Ward accounts and two small ones of £48 and £37, and a condition was attached to this list that if the Bank of New Zealand did not take over these accounts within three months then they were to be handed back to the liquidators of the Colonial Bank to be wound up. As the two small accounts were paid in cash, it would appear that the Ward accounts were the only ones so treated. It is difficult to avoid the assumption that the Ward accounts were selected for special treatment.

The "D" list represented Bad and Doubtful Debts and properties held against closed accounts, and the Liquidators are stated to have realised about 10/- in the £ for the whole of the list.

The official liquidators, appointed by the Court, were Messrs. Keith Ramsay, Wm. B. Vigers, and W. J. M. Larnach, the last named being later replaced by Mr. W. L. Simpson, who represented the shareholders.

These liquidators were in 1901 replaced by the Official Assignee at Dunedin.

The story of the liquidation is somewhat wrapped in mystery. It was not until ten years after, in February, 1905, that a brief statement was made by the Official Assignee in the Court when applying for the final dissolution of the Colonial Bank. No report was made to the shareholders during that period.

They received 10/- per share at the beginning of the liquidation and at the end a final dividend of  $1\frac{1}{4}$ d.—a total of  $11\frac{1}{4}$ d. per share. In other words, they received £111,454 in all, in return for the £484,980 shown as their interest in the Bank at the 31st August, 1895, plus £75,000 paid as goodwill by the Bank of New Zealand.

It would serve no good purpose to traverse the ramifications of the agitation and litigation connected with the liquidation of the Colonial Bank. It became necessary for the Ward Farmers' Association to go into liquidation, and the Hon. J. G. Ward also was adjudged bankrupt in July, 1897. Various attempts were made to force the liquidators of the Colonial Bank to take some action either against the directors of the Colonial Bank, or against those of the Ward Farmers' Association. However, no action was taken, and it is difficult at this distance of time to discriminate as to how far the various allegations were actuated by political and personal animus rather than by a genuine desire to right a wrong. As already stated elsewhere, political feeling during this period of New Zealand's history was very strong.

It is not, of course, surprising that the Colonial Bank shareholders should have felt aggrieved at the disappointing return ultimately received by them from their investment, especially as many of them had paid above the par value of £2 for their shares, but the liquidation of the assets was carried out during a period of great depression when values were low and losses consequently heavy, and the liquidation expenses over the 10 years must have been considerable, the various legal proceedings, no doubt, adding materially to the total.

With our knowledge of the disastrous losses which had to be provided for in the case of the Bank of New Zealand during the years prior to, and following, the purchase of the Colonial Bank, and bearing in mind that one of the alleged causes of those losses was stated before the Parliamentary enquiry of 1896 to have been the keen competition for business as between the Bank of New Zealand and the Colonial Bank, it appears very doubtful whether the Colonial Bank could have survived had it continued its separate existence instead of selling out to its rival. Its reserves were small and its advances evidently included some very troublesome accounts. Had it eventually been compelled to close its doors the losses of its shareholders would have probably been greater than

resulted from the sale to the Bank of New Zealand. They at least received £75,000 for goodwill which they would not otherwise have received. The total Uncalled and Reserve Liability of the shareholders amounted to £1,600,000, and it is possible that some part of this might have been required instead of their receiving as they did a return of part of their capital.

The story of the Colonial Bank is not one of the bright spots in New Zealand's banking history, but had it not been for the sinister shadow cast over its demise by the political intrigues of those days, it would at the worst have been but one more of the many victims of a world-wide economic depression, which during those years eliminated so many business undertakings which had not yet built up sufficient strength to stand up against it.

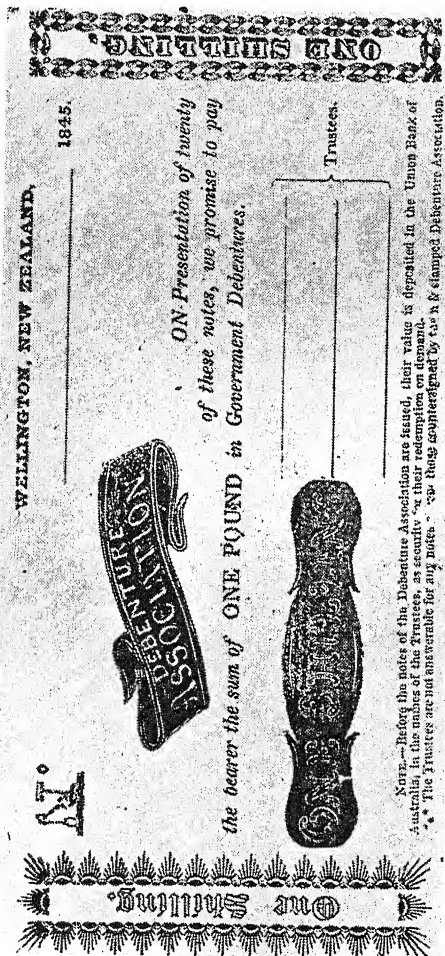
#### **(5) Development of Banking System.**

We now propose to give a brief general review of banking developments over the period of some 90 years.

We think it unnecessary in this brief outline to dwell further on the banking history of this country prior to 1860. There is no question that the discovery of gold in Otago in 1861, resulting in some £25,000,000 worth being taken from Otago and later from the Thames and West Coast districts during the following ten years, did much to give an impetus to the development of, as well as a firm foundation to, banking during those years. The wool industry was also well established by this time.

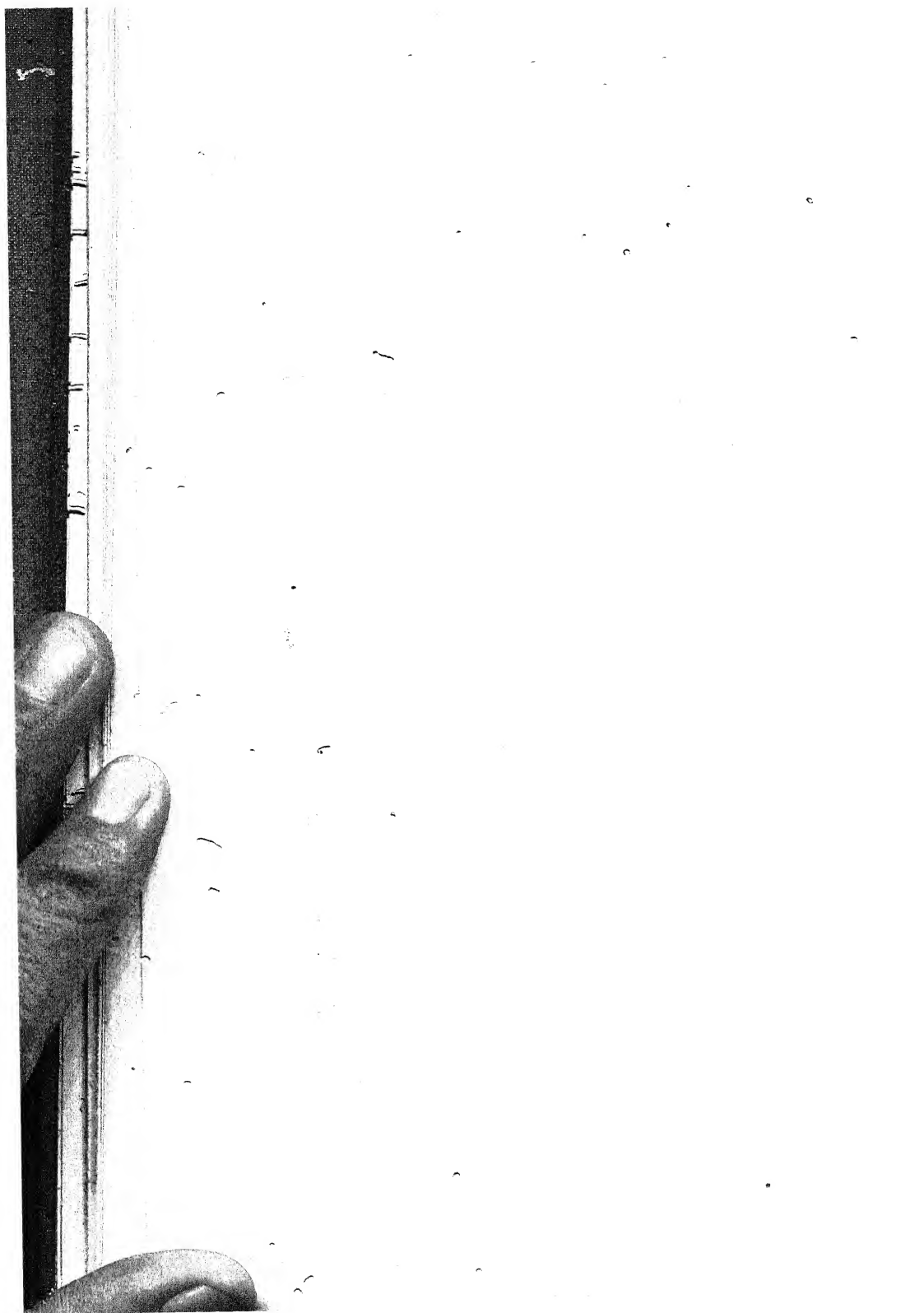
“ The first considerable flocks had been imported by Bidwell in 1843 and (Sir) Charles Clifford in 1844. Three years later Clifford and his partner, Weld, drove sheep from Port Underwood to the plains north of Canterbury, and by 1850 they had 11,000 sheep on their station at Flaxbourne (Marlborough). At this time wool was the main item of export.” (Condliffe).





Courtesy of Johannes Andersen, Esq.,  
Librarian of the Turnbull Library, Wellington, N.Z.

Facsimile of a one shilling note of a series issued by the Debenture Association in 1845. This form of currency was adopted to meet the need for coinage in the newly-established settlement. The value of these notes was deposited with the Union Bank of Australia before the notes were issued, as security for their redemption.



The export of meat did not develop until the advent of the refrigerating process in the 'eighties. The export of wool in 1853 was valued at £67,000, in 1863, £830,000, and by 1873, £2,702,000. (Condliffe).

Whilst the gold boom resulted in great prosperity for the time being, it did not last long, and before 1870 a reaction had set in and there was great depression, especially in Otago. "The years 1870 and 1873 were the last good years of rising prices before the fall in the price-level set in, which was to continue until 1894." (Condliffe). But the borrowing policy of the Government of the day, and the encouragement of immigration, railway development, and land speculation, gave to the 1870 to 1880 decade a fictitious prosperity which was to bear bitter fruit in the 'eighties and 'nineties. "In 1870 the population of the colony was 248,400, in 1880 it had grown to 484,864. In those ten years the public debt grew from £7,841,891 to £28,583,231." (Condliffe).

In the four years from 1873 to 1877, 907 miles of railway were completed, and in the ten years following, 701 miles were built. ("State Socialism in N.Z."—Le Rossignol and Stewart, London, 1912). The mileage open for traffic in 1873 was 145. (Condliffe).

These movements are reflected in the banking returns of the period, and a very prominent feature of those returns is the amount of bank advances compared with deposits. In March 1870, the deposits totalled £1,806,554, whilst the advances were £2,856,196, but by March 1880 the deposits had increased to £8,102,326, whilst the advances were £11,834,298. A special feature of the advances of those days was the very high proportion of the total which was represented by bills discounted, amounting to nearly one-half. In these days the discounting of trade bills represents a very minor part of the accommodation granted by banks to their customers, but in earlier days the discounting of bills occupied apparently more of the bank manager's attention than did the granting of overdrafts.

During this period, 1870-1880, was laid the foundation of the banking troubles of the 'nineties. Premier Vogel's progressive railway and immigration policy and the heavy borrowing by the Government to develop that policy, resulted in such speculation that the value of agricultural and pastoral land was forced up beyond any sound economic basis, and these values were reflected in urban property also. We are in this year 1934, experiencing the reflex action of a similar boom and speculation in land values, the aftermath of the Great War. But whereas this country enjoyed almost unbroken prosperity from 1900 to 1929, enabling the people as a whole to build up reserves of strength which have enabled us to weather the storms of 1930 to 1934, the position differed materially in the 'eighties. Many of the banking and other financial and trading companies had not been long enough in existence to have built up sufficient strength to withstand the losses resulting from the fall in values, especially as they mostly failed to recognise that values were on a fictitious basis.

One of the effects of the depression of the 'eighties was the fall in imports. Comparing 1878, which was the "peak" year, with 1888, which was the worst year of the depression, the volume of imports in the latter year fell by 40% per head of the population. (Condliffe). Further results were a loss of population, and labour troubles. It is hardly necessary to carry the comparison between that period and the present day (1934) any further, beyond perhaps mentioning that it was ten years from 1888 before it could be said that the period of depression was over, and a number of years after that before land values recovered materially. Farm land in New Zealand in 1900 was still at a very low figure, far below the depressed values of 1933.

The history of the 'nineties is fairly completely covered in other chapters under the headings of the respective individual Banks, especially those of "Bank of New Zealand" and "Colonial Bank of New Zealand." The

progress of banking during the decade 1890 to 1900 is sufficiently indicated by quoting the total banking figures under the head of deposits and advances at 31st March in each of these years, which are as follows:—

		<i>Deposits.</i>	<i>Advances.</i>
1890	.....	£12,219,640	£14,009,124
1900	.....	£15,365,442	£11,164,500

These figures indicate that there had been no marked progress as a whole during the period, but that the position was healthier in 1900 than in 1890, though it is also evident that the surplus of deposits in the Banks at that date showed a general want of enterprise and confidence on the part of the people. The stage was, however, set for that move forward which, commencing at this point, shows a continued and increasing prosperity up to 1914. We shall deal with the War years later. The following figures give some idea of the sound progress made from 1900 to the outbreak of War:—

		<i>Deposits.</i>	<i>Advances.</i>
1905	.....	£20,319,364	£15,074,245
1910	.....	£24,491,928	£17,993,444
1914	.....	£26,701,519	£23,666,750

Banking finance ran very smoothly over this period.

There was a minor set-back in 1901 owing chiefly to a temporary fall in wool values, and in 1907-8 the Dominion suffered to some extent from the effects of the American financial crisis of 1907. But these were little more than ripples on the financial surface. It is therefore hardly necessary to dwell further on banking developments during this period.

## **(6) The Great War Period.**

The outbreak of War in August 1914, however, brought our banking authorities face to face with many problems in the solution of which they had little precedent to guide them, and it is remarkable that after the first uncertainty resulting in a sudden demand for gold by a few nervous depositors, which was at once met by bank notes being

declared legal tender by Government proclamation, banking finance moved along without major disturbance. There was no sign of panic or suggestion of doubt that the Banks could be safely depended on to meet the banking needs of the people.

The effect of withdrawing gold from circulation was an immediate increase in the note circulation, which rapidly doubled, for gold—prior to the War—was preferred to notes as currency by many people. The sovereign-case holding from five to ten sovereigns and half-sovereigns which dangled at the other end of the city man's watchchain soon became a thing of the past, and is now merely a relic of a curious custom of days "before the War."

Other early effects of the War on banking conditions were the depletion of staffs and the necessity of introducing women clerks to the mysteries of banking, hitherto a jealously guarded preserve for the male sex only. It had been held that women were temperamentally unfitted for that secrecy which is so integral a part of the conduct of banking, but we think it can be said here that those fears have proved unfounded, and that women clerks have now in the banking world a definite place which they are likely to retain.

An early result of the need for supplying the soldiers of the Empire and its Allies with clothing and blankets was an increase in the price of wool, which rose 50% by 1915. Meat and dairy produce also materially increased in value, and export of meat was prohibited except for use of the British Government. By 1917 the whole of the Dominion's export of produce was under Government control at prices exceedingly favourable to the primary producer. This simplified materially the banking side of advances against exports, as payment at fixed prices was received within a brief period of receipt of the produce into store at port of shipment.

Another feature of War time finance affecting Banks was the raising of large internal loans—£2,000,000 in 1915,

£8,000,000 in 1916, and £12,000,000 in 1917, and further amounts later. In addition to subscribing liberally the Banks in 1917 assisted by making War Loan Advances to customers who could not find immediately the full amount they desired to subscribe. Advances were made by the Banks up to 90% of the face value of the amount applied for by the customer, who repaid the advance over a period by instalments. This method was of valuable assistance to the Government in obtaining the very large sums required.

Taxation due to War needs had a serious effect on banking profits—indeed, it may almost be said that so far as Banks were concerned the extra profits made as a result of War prosperity were eaten up by the tax collector.

This War prosperity continued until towards the end of 1920 when a sudden change came over the scene, and 1921 was a year of gloom and financial anxiety. A flood of imports entered the country due to over-ordering in previous years when import orders were only partially fulfilled—and accumulated and uncanceled orders were suddenly thrust upon unwilling importers. This synchronised with a severe fall in export values, and exchange rates on London reached unprecedented figures compared with previous banking experience. We have in between 1931 and 1933 seen much higher rates—but in 1921 £3% for London exchange appeared to be a fantastic price to pay!

It was deemed in this year, 1921, necessary to declare a moratorium on deposits of other concerns than Banks, more particularly to protect stock and station agency and trading concerns, whose acceptance of deposits without making any provision for repayment in times of distress had long been, and still is, an outstanding weakness in the financial structure of business in New Zealand. Many depositors in these concerns have not yet been repaid those deposits, and in some cases at least it is doubtful if they ever will be.

By 1923, as a result of improved export prices there was a general recovery and there is little to comment on with

regard to banking progress from then until 1929, beyond recording a steady progress year by year, good prices for exports, firm and increasing values for both rural and urban property and all classes of sound shares, and increased profits from all healthy business enterprises.

**(7) And then the Slump.**

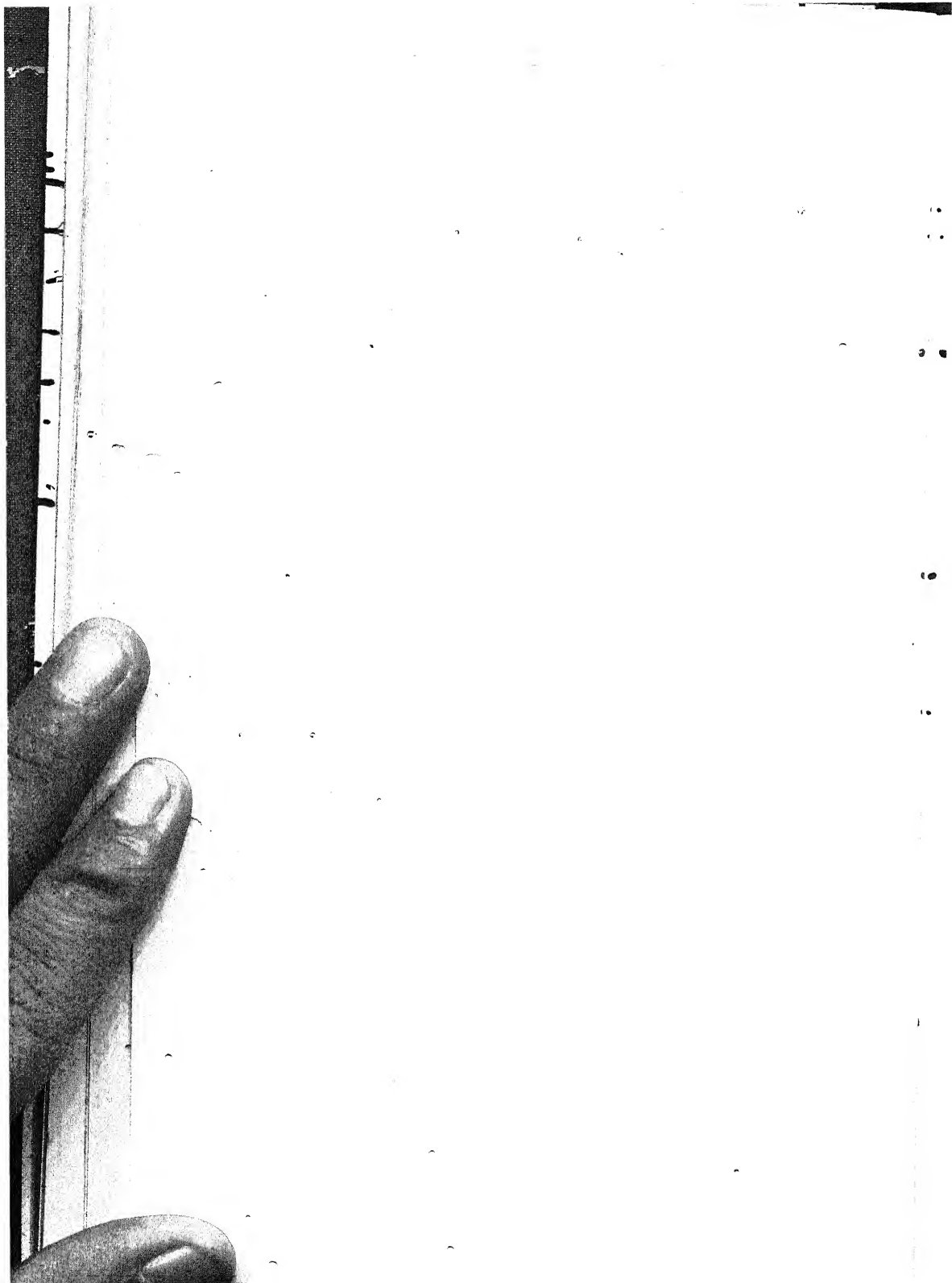
Whilst the date of the commencement of the depression which at the time of writing is still afflicting this country, as well as the rest of the world, is usually fixed as September, 1929, when there occurred an unprecedented financial crisis in America, previously the most prosperous country in the world, there were many previous signs of approaching trouble in New Zealand and Australia visible to those who had eyes to see. Financial and particularly political movements in Australia had for some years given rise to misgivings here owing to our close financial connection with Australia through our leading financial institutions, and there is little doubt that that connection has operated adversely to the interests of New Zealand. Well before September, 1929, there was also visible in New Zealand a doubt as to the financial future. There was a very definite tendency in the direction of increasing fixed deposits with the Banks—and in 1928 and 1929 the Banks were overloaded with funds, indicating a want of confidence and enterprise on the part of the business community. In 1920 69% of the deposits in the Banks were non-interest bearing; by 1928 this figure was reduced to 49% and has since reduced at 30th June, 1933 to 33%. This is ever a sign of stagnation. Sir George Elliot in his speech to shareholders of the Bank of New Zealand on 21st June, 1929, referred to "difficulty in finding investments" and "the halt in industrial expansion"—"farming is not developing at the pace one would expect" and "our Bank has too great a capital and reserves for the business offering."

These were merely premonitory signs of approaching trouble, but even the most pessimistic prophet did not foresee the world-wide fall in the price level, and primary





The original note was presented to one of the Banks for payment while this work was going through the press. Reference to the issuing Bank is made on page 9.



producing countries such as Australia and New Zealand were to feel the full brunt of the fall. Many difficulties quickly arose—increase in exchange rates owing to lessening of returns in London from produce exported, and difficulty of raising loans in London; loss of income of all classes of the community; fall in all land values; reduction of dividends and severe fall in value of all shares; great increase in unemployment; increase in taxation owing to loss of revenue by the Government, including a wages-tax of 1/- in the £1; labour disturbances due to reduction in wages, and vastly increased responsibilities on the part of the Government, and on the part of all those whose duties included control of financial institutions.

As has been the case in previous depressions of the kind the Banks, the monetary system, and the Government, were all held individually and collectively as chiefly responsible by the ignorant and prejudiced for the troubles of the day. That past Governments, with the full consent of the people, had been guilty of extravagance is unquestioned; that there may be found some day a better standard and measure of exchange than gold, is possible, but we consider that future historians dealing with this period will unquestionably be of opinion that the one thing which held both New Zealand and Australia back from the black chaos of a financial cataclysm was the strength of the Banks, and the wisdom and ability of their past and present administration.

A feature usually present in such financial crises is not absent in the present one—namely a crop of would-be financial experts who are prepared to tell us just what is both the cause of and the remedy for all our troubles. These quack remedies mostly consist of juggling with currency and credit, and their advocates are usually suffering from the absence of a close practical acquaintance with either. In a different category, however, lies the form of inflation which throughout 1932 received the greatest support, mainly and naturally from pri-

many producing interests, was an artificial increase in the exchange rate New Zealand on London, or in other words a depreciation in the value of the New Zealand pound in relation to sterling and gold. This is more fully dealt with in the chapter dealing with Exchange. It is sufficient here to say that the wide discussion of this highly technical and deeply important subject in the press and in public meetings was of great educational value to the business man, the farmer, and the politician, and, in fact, to all classes of the community.

#### **(8) Effect on Exchange Rates and Deposits.**

In 1931 New Zealand was feeling the full effects of the depression, and one of the many results of the fall in export prices was a serious decrease in the London funds of the Banks trading in New Zealand. It became necessary, following on a similar move in Australia, to specially consider the relative needs of importers, and of the Government and Local Bodies who, between them, required some £9,000,000 a year for interest on loans raised in London. As a result of these deliberations, in December, 1931, exchange pool arrangements were entered into between the Banks and the Government. Under these Regulations the Government was to have the first call on the London funds of the Banks resulting from realisation of New Zealand exports. As a condition the Banks required that all the proceeds of such exports should be received by the Banks—in other words that if the Banks were to be compelled to find London funds for the Government, the Government should in turn see that the Banks were placed in a position to provide such funds. Much opposition to these regulations arose, chiefly on the ground that the effect was to prevent outside competition for exchange, and that exchange rates were thus pegged at a rate agreed to between the Government and the Banks, and so the exporter was cheated of his profit from a possibly higher rate. This was not so, as the rate was based on sound banking principles, and would have been increased had the trade returns warranted

any higher rate—indeed when the Government in 1932 were able to arrange for a loan of £5,000,000 in London the exchange situation was sufficiently relieved to allow the Exchange Pool regulations to be withdrawn. Since that date there is little doubt that the exchange rate should, on the aforesaid sound banking principles, have been materially reduced.

Instead of a reduction, however, the London rate was increased, at the demand of the Government, in order to assist the primary producers.

The question of the exchange rate between New Zealand and London is fully dealt with in the chapter dealing with exchange. The rate was increased to 25% on 20th January, 1933, and the Banks were indemnified against loss by the Government taking over at cost price all surplus London moneys purchased by the Banks at the 25% rate. This right of indemnity ceased, however, on the Reserve Bank commencing operations on 1st August, 1934.

The year 1931 was also noteworthy as a year of increased taxation—and among the further forms of impost was an increase by 50% in the tax on the note circulation of the Banks—from 3% to 4½%. As the Banks bore the cost of the note issue and besides paying Land Tax, were already taxed on the basis of their total assets and liabilities, the latter including the note issue and the former including the gold held to cover the note issue, the added tax made the privilege of issuing notes one of doubtful value. In order to partially recoup themselves for this impost the Banks decided to increase the charge to customers for keeping accounts from 10/- to £1 per annum.

One of the marked effects on banking figures of the slump conditions of 1930/1934 has been the increase in deposits on the one side and the decrease in advances on the other. Comparing the figures at 31st March, 1929, with those at 31st March, 1934, the position is striking—

	31st March, 1929.	31st March, 1934.
Deposits .....	£55,345,495	£61,113,432
Advances .....	£45,175,305	£40,311,423

A further feature is the proportion of the deposits which constitute fixed as against free deposits. The loss of confidence in all forms of enterprise, the loss of faith in mortgage investments and in Government and local body bonds, no doubt contributed to the increase in fixed deposits. The people had at least faith in the Banks and a well-founded belief that there would be no contract breaking as between the Banks and their customers.

The same loss of confidence in the future resulted in a lessened demand for loan money, and as overdrafts contracted, as business generally contracted, so bank advances were reduced and the banks at the time of writing have large surplus funds for which there is no demand. It would appear that interest rates on deposits must be still further reduced with a corresponding reduction in overdraft rates. Much as borrowers may welcome lower rates, the state of stagnation which has produced such conditions is not in the interest of the people as a whole. When confidence returns, overdrafts and interest rates will increase, and deposits will decrease, and only then will unemployment cease to be a serious problem.

#### **(9) The Incorporation of The Reserve Bank.**

In another chapter we deal with the legislation creating the Reserve Bank of New Zealand, and beyond recording here as an historical event the advent of this new institution it is not necessary to deal with it in detail. It is difficult to formulate the consideration that led to the incorporation in 1934 of this Bank. It was created and launched on its career in an abnormal period and there is reason to believe that its addition to our banking organisation at that juncture was a somewhat premature move. However, it certainly represents conformity with a well-defined move towards a co-ordinated banking system within the Empire and the Bank's incorporation was bound to occur within the decade. The Reserve Bank is here to stay, and whilst it will not create a new heaven and a new earth for the inhabitants of this Dominion its

influence, providing it is free from the control of politicians, will probably make for stability. We do not think that so far as the ordinary citizen is concerned, the operations of the Reserve Bank will affect him in any appreciable way. The conduct of banking in New Zealand has been on a very high plane of ability and integrity, and we do not consider the creation of a Reserve Bank, however ably controlled, will lift banking to a higher plane than hitherto. As for control of currency and credit, even a Reserve Bank is subject to, and must obey, the same economic laws as have hitherto controlled banking in New Zealand and in so far as the Reserve Bank may voluntarily or under pressure, depart from observance of those laws, so much the worse will it eventually be for the people of this country.

Probably the most controversial feature accompanying the creation of the Reserve Bank was the legislative authority compelling the trading banks to hand over their gold holdings to the Reserve Bank in return for Reserve Bank notes. The banking attitude was that the bulk of the gold had been imported from England by the Banks and was held to cover their note issue. It was their own property and one of the foundations of their strength. They considered they should be allowed to export any surplus gold beyond the statutory requirements for note issuing purposes, and were entitled to any profit arising from sale of such gold in London. As a sovereign in 1934 is worth about 35/- in the world's market, the Banks objected to receiving therefor a Reserve Bank note valued in the world's markets at 15/-, and probably less. They were willing, though reluctantly, to accept "sterling"—and a sovereign is "sterling" if any coin can be so termed. However, in spite of protests on these lines by the trading banks, the gold has been handed over to the Reserve Bank in terms of the Act. The legislative attitude was, generally, that the increased value of the gold was entirely due to legislative action in England and in New Zealand, and such State-created value belonged to the State. The arguments are fully set out on page 153.

However, in spite of the difficulties economically unavoidable, and the difficulties created for us which might have been avoided, we believe that in this year 1934, New Zealand is showing signs of recovery from the depression of the last four years and, given intelligent and unselfish co-operation between the people and their chosen leaders, we have every confidence in her attainment of a happy and prosperous condition again.

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## CHAPTER II.

## THE BANKS OF TO-DAY.

**(1) The Bank of New Zealand.**

According to Mr. Falconer Larkworthy, in his "Ninety One Years" (London 1924), the credit for promoting the Bank of New Zealand belongs to one, Thomas Russell, whose later connection with the Bank was not, however, to the Bank's advantage.

Mr. Larkworthy arrived in New Zealand, from Australia, in 1860, on behalf of the Oriental Bank Corporation, an undertaking which had branches in Auckland and Dunedin (its Head Office in London and headquarters for Australia in Melbourne), and whose New Zealand business was causing its London Directors some anxiety. They were considering discontinuing business here as "the accumulative resources of the Colony in the shape of deposits being very insignificant," too much loan money was required. He was instructed not to extend the business, but to weed out the bad, conserve the good, collect some old debts, and keep the assets in liquid form. Thomas Russell had become an early client of the Oriental Bank. In May, 1861, Larkworthy received instructions to close up the business, and Mr. D. L. Murdoch was sent from Australia on behalf of the Bank of New South Wales to take over the premises and such business of the Oriental Bank as suited the Bank of New South Wales, which commenced business in New Zealand at Auckland on 11th June, 1861. Mr. Murdoch, however, hesitated about taking over Mr. Thomas Russell's account—which is not surprising. Mr. Larkworthy says, "I found his account, at times, was a very large one; his bills had often to be renewed, and both the account and he were difficult to manage."

As a result of this hesitation Russell intimated that unless he received from Mr. Murdoch an immediate reply, satisfactory to himself, he would establish a new local Bank—at which "Mr. Murdoch smiled incredulously." "Whatever

credit there was in promoting the Bank of New Zealand belonged in the first place to Mr. Russell; but his motives were in a great measure self-regarding." (Larkworthy).

Mr. Larkworthy had confidence in the future of New Zealand, if the Directors of the Oriental Bank had not, and he decided to throw in his lot with Russell and the new venture (which Mr. Murdoch and others stigmatised as "harebrained") on condition that he was given the appointment of Managing Director in London.

"The public mind was ripe for a new departure"—gold discoveries on Coromandel Peninsula, in Thames district, and in Otago were giving an impetus to immigration and days of great prosperity were in prospect. Larkworthy, with his knowledge of gold-buying, based on his Australian experiences, foresaw great possibilities of profit therefrom.

The formation of the Bank on the lines of the Deed of Settlement of the Bank of New South Wales was proceeded with, and "Applications for Shares were promptly called for throughout the Colony and in Sydney, and an Act of Incorporation was moved for in the Colonial Parliament, and finally obtained on the 29th July, 1861." ("Ninety-one Years"—Falconer Larkworthy).

The following extracts from the original prospectus will be found interesting:—

#### THE BANK OF NEW ZEALAND.

TO BE INCORPORATED BY AN ACT OF THE GENERAL ASSEMBLY, OR BY CHARTER LIMITING THE LIABILITY OF SHAREHOLDERS.

Capital, £500,000, in Shares of £10 each.

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Paid-up Capital, £250,000.

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Preliminary Deposit, 2s. 6d. per Share.

A payment of 17s. 6d. per share on signing the deed of settlement; a further payment of 20s. per share 3 months after signing the deed of settlement; the balance of 60s. per share, making the

total 50 per cent. if required, in calls at intervals of not less than 3 months thereafter, and on notice.

To be conducted by a Board of Directors—say seven in number—who shall elect from among themselves two Directors, to advise with the Local Manager, as required. The Board to have a general control of the Bank's operations.

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PROVISIONAL TRUSTEES.

*Auckland:* J. Logan Campbell, T. Henderson, J. O'Neill,  
T. Russell, James Williamson, Esqrs.

*Wellington:* A. D. Brandon, W. B. Rhodes, Esqrs.

*Nelson:* H. E. Curtis, Esq., Hon. E. W. Stafford.

*Canterbury:* Hon. F. A. Weld, J. Cracroft Wilson, Esq.

*Otago:* E. McGlashan, J. Jones, Esqrs.

*Hawke's Bay:* J. Watt, Esq.

*Wanganui:*

*Marlborough:*

*Taranaki:*

*Southland:*

It is manifest to those who have directed attention to the subject, that the Banking establishments in New Zealand have derived immense profits which are payable entirely to a foreign proprietary, *from a trade* CARRIED ON WITH THE FUNDS OF THE COLONISTS: a circumstance which must lead to the consideration whether the Colonists of New Zealand are not now in a position to enjoy, and entitled to receive, whatever advantages can be derived from the employment of their own capital.

Another consideration which should unite the Colonists of New Zealand in an effort to establish a New Zealand Bank, is this, no Foreign Bank will study the interests of New Zealand; but the interests of such an establishment are regarded as paramount; the New Zealand branches being of necessity made to feel the effects of financial pressure in other Colonies, and accommodation is given or refused, frequently, not according to the requirements of the Bank's customers in New Zealand, but measured by the Bank's engagements and necessities elsewhere. A New Zealand institution would not be disturbed by these influences; its capital would be specially devoted to New Zealand interests.

A reference to the Bank returns, published periodically in the Government Gazettes of the colony, will show the very large profits made from the Deposits of the Colonists. What foreign Banks have for many years done for us with our own funds, we now propose to do for ourselves by local effort and management.

It is, therefore, proposed to establish on a broad and permanent basis a Banking Institution capable of doing the present Banking business of New Zealand, and susceptible of expansion with a view to meet the requirements of that prosperous future which it is believed will certainly and shortly be realized for New Zealand.

To accomplish this desirable result—to secure the bulk of the deposits now held by foreign Banks—and to give to the public an institution worthy of confidence—it is proposed that the capital shall be 50,000 shares of £10 each. This amount it is conceived will be more than ample to secure the confidence of the public, and of any foreign Banks with whom it may be desirable or necessary to have transactions.

One-half of the subscribed capital to be called up.

The shares have been fixed at the moderate sum of £10, with the view of enabling all classes of the community to identify themselves with the monetary interests of the country.

Branches of the "Bank of New Zealand" will be established in every town of importance in the Colony. Each Branch to be managed by a Local Manager appointed by the General Board, and two Directors, chosen by the resident local proprietary, when the local proprietary represent a capital of £40,000 in the Bank, until which time such Directors to be appointed by the General Board.

In London there will be a Board of Direction and Secretary; and it is anticipated that a sufficient number of influential Colonists, shareholders in the Bank will always be found resident in London to form such Board.

Arrangement with some desirable English Bank will be made for effecting Exchange.

The "Bank of New Zealand" will make advances upon Bills of Lading, Bonding Warrants, and other legitimate securities.

It will be the object of this Bank to render all possible accommodation and facilities consistent with its proper functions to the merchant, settler, storekeeper and farmer.

It is proposed to reserve at least 10,000 shares for sale in England.

A reference to the last Bank returns published in the Government Gazette of 31st May last, will show that one English Banking establishment in New Zealand had, on 31st March, 1861, Deposits belonging to the Colonists amounting to £619,352 8s. 6d., together with a circulation of Notes, amounting to £105,795, making a total debt to the public of £725,147 8s. 6d., while the Coin and Gold held against this large sum amounted only to £161,317 12s. 0d., showing that a large amount of New Zealand deposits are made use of by that Bank out of New Zealand. Not only is a large profit derived from this source, but the same Bank discounts for, and advances



# BANK OF NEW ZEALAND.

15 Jan'y. 1862

PAID IN to the credit of

*Lepman Perry*

the Sum of

*Forty Pounds*

By *Self*

*W. J. H.*

	£	s.	d.
DRAFTS .....			
CHEQUES .....			
NOTES .....			
GOLD .....			
SILVER .....	40	-	-
COPPER .....			
TOTAL...£	40	-	-

Facsimile of the first lodgment made at the Wellington branch of the Bank of New Zealand.

Courtesy of the Bank of New Zealand.

to the public £641,208 11s. 1d., upon which an average rate of interest, say 9 per cent., is obtained.

The first General Meeting of proprietors was held at Auckland on 30th April, 1862, when the following were elected to office:—

*President*—James Williamson.

*Directors*—Thomas Henderson, M.G.A.

David Nathan

James O'Neill, M.G.A.

George B. Owen

Thomas Russell, M.G.A.

Charles I. Taylor, M.G.A.

*General Manager*—Alexander Kennedy (formerly of Union Bank of Australia).

The first branch opened was at Auckland on 15th October, 1861, then followed the opening of branches at New Plymouth, 15th November, 1861; Wellington, Nelson and Napier, January, 1862, and later at Lyttelton, Christchurch, Dunedin and Invercargill, and Agencies were established at Blenheim, Picton, Timaru, Kaiapoi, Goldfields (Wetherstone), Waitahuna, Tokomairiro, and Riverton.

It is interesting to pick out a few names from the list of original shareholders. The new institution certainly had a good backing in this respect. Auckland was represented by:—

Sir George Grey

Sir Frederick Whitaker

Sir George Whitmore

John Logan Campbell

A. Buckland

W. S. Grahame

P. Dignan

Falconer Larkworthy

David Nathan

N.Z. Insurance Company  
and many others.

Amongst Wellington names were the following:—

J. H. Bethune

W. M. Bannatyne

C. D. Barraud

A. de Bathe Brandon

Jacob Joseph

John Martin

E. W. Mills

Edward Pearce

N. W. Levin

C. J. Pharazyn

John Plimmer

W. B. Rhodes

D. Riddiford

Walter Turnbull

George Turnbull

In Dunedin amongst others were the Begg family; in New Plymouth, Samuel Joll, T. S. Weston, and Thomas Hempton; in Nelson, E. Buxton, J. C. Richmond, and Alfred Fell.

The list includes many New Zealand names which were well-known or were to become well-known to their generation, and in many cases to generations to come.

The first balance-sheet of the Bank was published at 31st March, 1862, and is of sufficient interest to be quoted in full:—

BALANCE SHEET AT 31st MARCH, 1862.

*Liabilities.*

	£	s.	d.
Paid up Capital .....	108,785	12	6
Notes in Circulation .....	62,914	0	0
Bills in Circulation .....	6,288	6	9
Deposits .....	334,097	7	4
Balances due to Other Banks .....	37,797	3	6
Profit and Loss .....	6,097	5	0
	<u>£555,979</u>	<u>15</u>	<u>1</u>

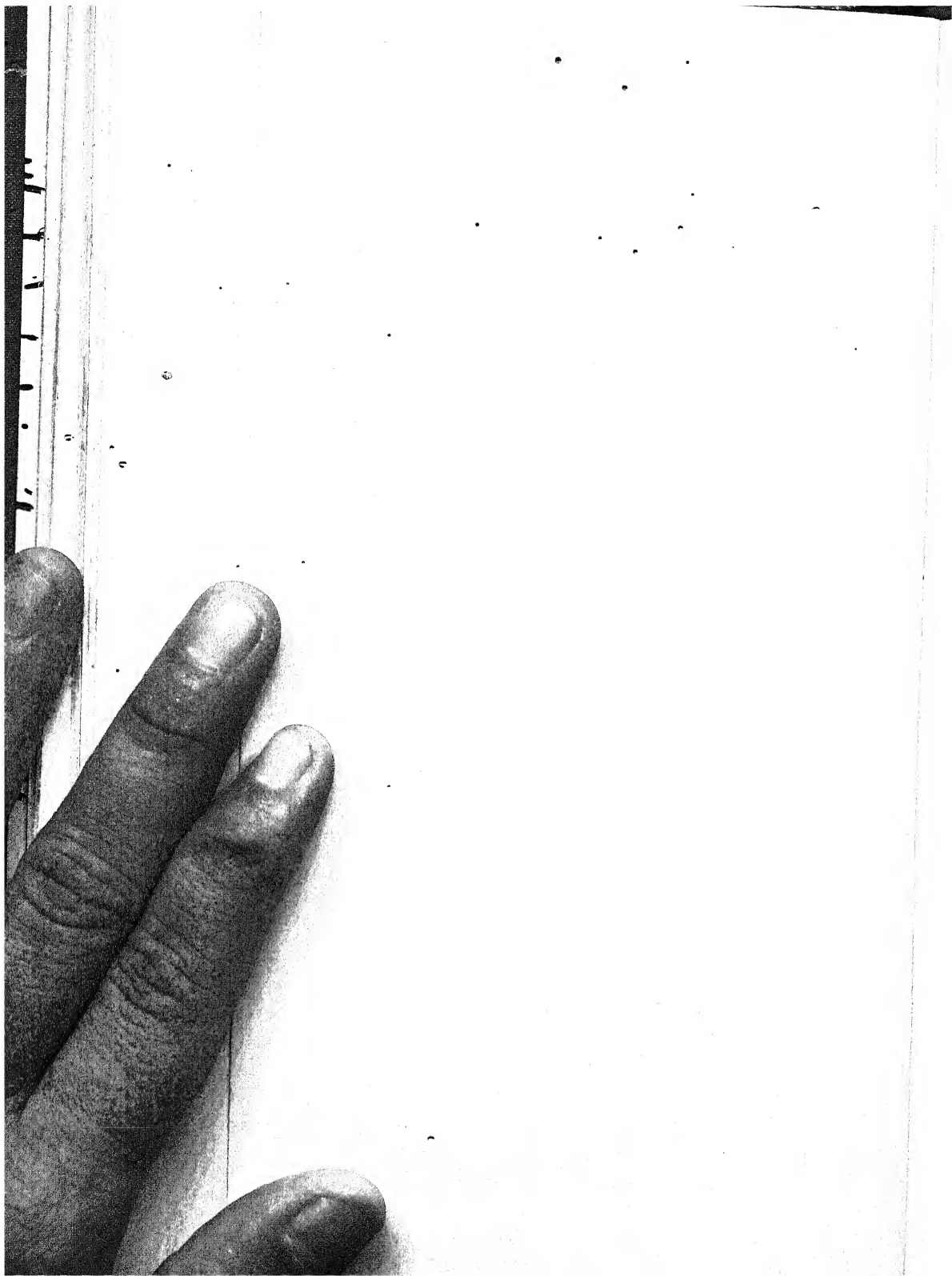
*Assets.*

	£	s.	d.
Coin and Bullion .....	261,512	8	4
Bills Receivable and Advances .....	162,164	4	3
Balances due by Other Banks .....	117,475	6	7
Notes of Other Banks .....	3,900	0	0
Preliminary Expenses .....	966	17	10
Landed Property .....	3,860	0	0
Premises, Furniture, Stationery .....	6,100	18	1
	<u>£555,979</u>	<u>15</u>	<u>1</u>

The Directors declared a dividend at the rate of 6% per annum, £2,370/12/-, and placed £3,000 to credit of Reserve Fund, which may be considered an excellent result for less than six months' trading!

We think it may be interesting at this point to quote the more important balance-sheet figures of the Bank during its whole 73 years of existence. They will be useful for reference as we consider further the history of the Dominion's chief Banking institution, and will also serve to give a general view of the Bank's progress and development from its earliest beginnings:—





As will be seen from these figures the Bank's early history was a period of remarkable progress and expansion. By the end of the fifth year paid up capital was £500,000, net profits were over £110,000, a dividend was paid of 17%, and a Reserve Fund of £150,000 had been built up. No doubt the large returns from gold mining were a strong contributory factor towards this prosperity, for it is estimated that during the ten years from 1862 to 1871 some £25,000,000 of gold was taken out of the Otago, Thames, and West Coast goldmining districts.

The following five years do not show a corresponding progress, the years 1867, 1868, and 1869 being years of commercial depression. In 1872 the profits were about the same as in 1867, the paid up capital was £600,000, and the dividend 15%—the Reserve Fund having increased to £180,000. The ten years from 1870 to 1880 were mostly prosperous years in New Zealand—not due so much to natural progress and high prices of the country's products, as to the borrowing policy of the Government for public works, particularly railways, and the encouragement of immigration.

“In 1870 the population of the Colony was 248,400, in 1880 it had grown to 484,864. In those ten years the public debt grew from £7,841,891 to £28,583,231.” (“New Zealand in the Making.”—J. B. Condliffe, D.Sc., London, 1930).

By 31st March, 1880, the paid up capital had increased to £1,000,000, the Reserve Fund to £555,000, the net profit was £142,139—besides £197,806 premium on new shares taken up during the year—the dividend being still 15%.

In 1872 the Bank extended its business to Australia, and in 1876 acquired the business of the Fiji Bank and Commercial Company, and so widened its scope to include the Fiji Islands.

Whilst the early “eighties” are historically important as the years in which the refrigerating process was inaugurated and proved a success, that period is frequently referred to as the “hungry eighties.” As one reads through the half-

yearly reports made by the Chairman of Directors to the proprietors over this time the constant reference to business depression is very similar to that heard in the days we have been passing through in this year of 1934 and its immediate predecessors.

In October, 1884, mention is made of the adverse business conditions of the previous three years, and in 1885 to "the long-continued depression which has been experienced throughout the Colonies and which has more or less prevailed throughout the world." Again, in April, 1886, reference is made to the "unexampled depression in price of all our products in European markets"—in October, 1886, to the "World-wide depression, unexampled in our time, which has so long prevailed," and in April, 1887, "such a period of unexampled depression, however, cannot be expected to have passed without leaving a very distinct track behind it." At this date £125,000 was transferred from the Bank's Reserve Fund to Bad and Doubtful Debt Suspense Account.

In October, 1887, the Bank failed to pay a dividend for the first time in its history. The Chairman stated that "for some years past, owing mainly to the persistent fall in values of nearly all our Colonial products, we have had to contend with a state of commercial and industrial depression of general prevalence, and intensified in this Colony as being the sequel to a period which we now are forced to look back upon as inflated . . . . . We have all along hoped that, in the ordinary cycle of commercial changes, a reaction would set in; but we can no longer conceal from ourselves that there are indications leading to the conclusion that a permanently lower range of values is a condition which must be faced and provided against, and, although it would be absurd to suppose that the Colony will not again enjoy renewed prosperity we nevertheless feel bound to recognise losses from depreciation in securities which hitherto we had hoped to avoid . . . . . Having regard to the question whether the losses, due largely to an exceptional state of things, should not be charged to the reserve fund, and the profits of the half-year be left to the

payment of dividend we most unwillingly have been compelled to come to the conclusion that it would be unwise to adopt for the second time a course tantamount to paying a dividend out of the reserve fund—such a proceeding might tend to weaken confidence in the Bank.”

In April, 1888, Net profit, “without appropriation for Bad and Doubtful Debts” was £54,755—and a dividend of 7% was declared. The Chairman said, “We have been able to earn over 10% on the Bank’s capital . . . . . the Bank’s earning power is crippled by the accumulation of advances and securities from which interest cannot properly be taken to profit, and which nevertheless we have felt reluctant to realise at the serious sacrifice which would be entailed in the present depressed state of values . . . . . on a strict valuation of our assets, and an equally strict compliance with the terms of the deed of settlement we should not feel warranted in dividing it without an assurance that we had first provided for all bad and doubtful debts. We have nevertheless come to the conclusion that . . . . . shareholders should not be entirely deprived for two half-years in succession of the income from their Bank shares upon which some of them, no doubt, in a measure depend . . . . . It will be in the mind of many of you to enquire what amount, in the opinion of the Board, would have to be sacrificed in order to ensure the early realisation of the assets to which I have alluded . . . . . You will recognise the difficulty of giving a categorical reply to such an enquiry when you consider the present stagnation of the market for property in this country . . . . . We should be glad, however, if you would appoint a committee of your number with whom we could confer on this and some other important matters which call for consideration. We have reason to believe that this course will be satisfactory to many shareholders, and it would certainly be satisfactory to us, and we think it would be advantageous to the Bank.”

At this meeting there was thereupon appointed a shareholders’ committee consisting of Mr. Justice Gillies, John McLean, of Otago; George Buckley, of Christchurch; Walter

W. Johnston, of Wellington, and Captain W. H. Colbeck, of Auckland.

As a result of the investigations and report of this committee the whole of the Reserve Fund, £500,000, was appropriated to cover losses, and £3 per share, amounting to £300,000, was written off capital for the same purpose. A further 50,000 £10 shares were then issued—25,000 in London on which £10 was called up, and 25,000 in the Colonies on which £7 was called up—making in all an addition of £425,000 to the paid-up capital.

The half-yearly meeting of shareholders held at Auckland on 24th October, 1889, however, was characterised by much bitterness of spirit. Captain Colbeck was Chairman, Mr. G. E. Tolhurst being acting-General Manager. A 7% dividend was declared, and the Directors proposed the removal of the Head Office from Auckland to London. "We feel that Auckland as the place for the Head Office of the Bank was discredited by the Committee's report . . . . . For these reasons and not, I repeat, from any want of confidence in the future of the Bank, or in our own capacity to manage its affairs we think we should recommend shareholders to authorise transfer of the control of the Bank to a Board in London, against whom no damaging insinuations of want of capacity, want of honesty, or want of proper candour can be maintained."

Mr. George Buckley, who had recently resigned the Presidency of the Bank, severely criticised the balance-sheet, and estimated that a further £300,000 of the capital had been lost, in addition to the £800,000 already written off (Reserve Fund £500,000—Capital £300,000). He criticised in detail many individual accounts, chiefly in Auckland, particularly some accounts of past directors, including that of one director then living in England, on which very heavy losses, not fully provided for, would yet have to be faced. Mr. Buckley particularly criticised a deed made between the director resident in England and the Bank, which precluded the Bank from making any demand on him, though he "was living at Home

at the rate of £6,000 or £7,000 a year." Great exception was taken to Mr. Buckley's remarks, especially as it appeared that he had disposed of nearly all his shares "while the going was good." He was also accused of threatening more than once to "smash the Bank" if he did not "get his demands on honorarium," and that for the sake of peace he was permitted to grasp two-fifths of the honorarium provided "by the shareholders for the services of seven directors, and that he also, in a most unseemly manner, took possession of a furnished house, carriages, horse, etc., belonging to the Bank, and which he now occupied, for which he pays no rent." (Remarks of Major George). Mr. John McLean was also shown to have reduced his shareholding from 976 to 5 shares, and strong feeling was shown against both him and Buckley. After a long and acrimonious discussion the Balance-sheet and Report were, however, approved by the meeting.

The necessary steps were then taken to transfer the Head Office to London, and on 26th August, 1890, at a meeting of shareholders held in London, the following Directors were elected:—

The Right Hon. A. J. Mundella, M.P.  
The Right Hon. Sir James Fergusson, M.P.  
J. A. Ewen  
T. M. Stewart  
Colonel Baring  
Richard Glyn  
Edward Fison.

Mr. Richard Glyn was appointed President of the Bank. A circular had been issued to shareholders immediately prior to this meeting, intimating that the policy of the new Board would be (1) to separate from the Bank, by making them over to a separate company to be called the Bank of New Zealand Estates Co. Ltd., the "globo" or dead assets, consisting of large properties originally taken as security for advances which the Bank had been obliged to take over; (2) to write-off Capital by a further £300,000. The valuation of the properties to be taken over by the Estates Company

was made by Mr. David Hean, who was sent from London to New Zealand for the purpose, the value being estimated by him at £3,107,993—original amount lent being £4,218,204. The capital of the Estates Company was fixed at £2,000,000. An issue of £1,500,000 5½% debentures was made in London by the Company, the proceeds of which were paid to the Bank, and the Bank received shares in the Estates Company to face value of £1,850,000 for the balance. The first call on the proceeds of the realisation of the properties taken over by the Estates Company was to be the redemption of the £1,500,000 debentures.

The meeting was presided over by Sir James Fergusson, and was entirely unanimous in adopting the proposals, both shareholders and directors expressing very optimistic views as to the future of the Bank.

The new Board appointed Mr. W. T. Holmes as General Manager and sent him out to New Zealand, replacing the acting-General Manager, Mr. J. M. Butt.

At 31st March, 1891, a 5% dividend was declared and £20,000 placed to Reserve Fund. The Estates Company shares were stated to be a good asset as conditions in New Zealand were improving, though labour troubles had affected business adversely. In February, 1892, the Chairman stated the Bank was reducing its advance business in Australia owing to conditions there, and for the year ending March, 1892, a dividend of 5% was paid, and £15,000 added to the Reserve Fund. The meeting held in London in August, 1892, evidenced a feeling of optimism as to the future. The meeting held in August, 1893, was presided over by Mr. Richard Glyn, who had recently returned from a visit to New Zealand. He was very favourably impressed with New Zealand, and with New Zealand's Premier, Mr. John Ballance, with whom he had negotiated a fresh agreement with regard to the conduct of the Government's account. In his remarks he said, "We are not hit in any way by the panic in Australia (which had resulted in fifteen Banks suspending payment earlier in the year). We lost no money by it. The panic in Australia gave this

Bank a tremendous lift, both in credit and in profit. We can see no signs of panic in New Zealand at present, nor do we anticipate any trouble of any consequence. The only large failure which has taken place is that of New Zealand Loan and Mercantile Agency Co. Ltd. . . . . for every penny they owe us we are most amply secured."

Owing to the banking crisis in Australia during the early part of 1893 when so many Banks suspended payment, it was deemed advisable to pass the Bank Note Issue Act, 1893, which made all bank notes a first charge on the assets of the banks in New Zealand, and authorised the Governor-in-Council by proclamation to declare bank notes legal tender. This proclamation was issued on the day the bill was passed, 2nd September, 1893. The operation of the Act was limited to one year, but was extended by subsequent Acts to 2nd September, 1896.

There was little or no disturbance to the business of the banks in consequence of this legislation, though it was anticipated it might cause a run on the banks, as conditions at the time were unstable, and the people generally were nervous as to the immediate future.

At a meeting held in London on 7th February, 1894, the usual interim dividend of 5% per annum for the half-year ended 30th September, 1893, was declared, and apparently everything was progressing favourably.

But on 30th June, 1894, as a result of negotiations with the Government of New Zealand, made on behalf of the Bank by Mr. John Murray, recent General Manager, the "Bank of New Zealand Share Guarantee Act," without any previous warning of such action so far as shareholders and the public were concerned, was passed as an urgent matter at one sitting of the House and of the Legislative Council, and received the Governor's assent before morning—the first intimation to the public of anything being seriously wrong with the Bank's affairs being contained in the morning papers of the 1st July. The position is set forth in a letter dated 25th June, 1894, addressed by Mr. Murray to the Premier, Hon. Mr. R. J.



Seddon. *Inter alia*, the reasons given for the need of the Government assistance were "owing to low prices, bad seasons, and other circumstances, the directors find that it will be quite impossible to declare a dividend to shareholders at the approaching annual meeting, the certain result of which must be the closing of the Bank; because even now, notwithstanding efforts to collect resources, the executive find the utmost difficulty in maintaining the gold reserve prescribed by law. The very low price of the Bank shares in the market is itself evidence of distrust, which may at any moment develop into panic. That the closing of the Bank of New Zealand would be a calamity to the Colony of the first magnitude can be questioned by no one . . . . . The trouble would not stop short with the Bank of New Zealand. . . . ."

In a letter dated 29th June, Mr. Murray further said

(1) "That the occasion is one of the gravest public urgency.

(2) "That by the measure I have proposed I am absolutely convinced that the State will not lose one penny, but will on the contrary avert great loss to itself as well as to the community.

(3) "That by this measure the banking affairs of the Colony will be placed on a greatly improved footing for the future; and

(4) "That if the Government finally determine to go on with the measure it should be put through to-day."

After a select committee of the Legislative Council had investigated the matter they recommended the Bill should be allowed to proceed and, as stated, it was passed on the evening of 30th June.

The "Bank of New Zealand Share Guarantee Act, 1894," contained the following provisions:—

- (1) The Government to guarantee an issue of 4% Preference shares to the amount of £2,000,000 (subsequently amended to, 4% Guaranteed Stock).

- (2) Directors to call up one-third of the Reserve Liability of £10 on the existing ordinary shares within 12 months of a request to do so being made by the Colonial Treasurer.
- (3) These Preference Shares to be paid off in 10 years from date of issue.
- (4) £1,000,000 of the amount to be used in the Ordinary business of the Bank and £1,000,000 to be invested.
- (5) No dividend to be paid on ordinary shares without consent of the Colonial Treasurer.
- (6) Head Office to be transferred to Wellington within three months.
- (7) New directors to be elected in New Zealand, and the President to be appointed by the Government, with power of veto.
- (8) Auditor also to be appointed by the Government.
- (9) Bank of New Zealand Estates Company shares, pending liquidation, to be valued at par.

At the August, 1894, meeting of shareholders in London, the last meeting under the auspices of the London Board, the Chairman stated that the year had been a bad one, that no return had been received on the £1,850,000 Estates Company Shares, owing to low prices of produce, and that instead the Bank had had to find interest due on the Estates Company debentures. There was tension in the Colony and shares were falling in value, and they feared that if the dividend were passed there would be a run on the Bank. Hence the position had been placed before the Government by Mr. John Murray on their behalf.

The issue of the £2,000,000 4% Guaranteed Stock was successfully made on the London market.

The next meeting of shareholders was held at Wellington on 26th September, 1894. Mr. John Murray occupied the Chair, and the business of the meeting being to elect new Directors, Messrs. Wm. Booth, Martin Kennedy, T. G. Macarthy, W. W. Johnston, and R. H. Glyn (London) were duly elected. Mr. Wm. Watson, Chief Inspector of the Colonial Bank, was appointed by the Government as Presi-

dent of the Bank in terms of the Bank of New Zealand Share Guarantee Act

The half-yearly meeting in February, 1895, was chiefly notable for some motions proposed by representatives of Nelson shareholders, who ventilated their feelings with regard to the treatment meted out to shareholders, and desired further information as to the balance-sheet figures, which showed a loss of £20,000 for the year. The various motions were defeated.

But in spite of the above measures the troubles of the Bank and its shareholders were by no means yet over. On 23rd July, 1895, Mr. Wm. Watson, President of the Bank, addressed a letter to the Colonial Treasurer enclosing Balance-sheets of the Bank of New Zealand Estates Company Ltd., and Auckland Agricultural Company, together with a letter from the Government Auditor, showing the true position of the Bank, "involved as it is with the affairs of the Estates Company." He stated the Bank had £3,085,296 represented as assets which were entirely unremunerative, of which £1,850,000 were shares in the Estates Company, the balance, £1,235,296, consisting of other debts, of which £376,898 were irrecoverable and others so doubtful as to need provision of £200,000. In the Estates Company there was a deficiency of £472,938, which deficiency was altogether apart from the book value of properties and other assets. Besides the £3,085,296 above mentioned there was, among the debts due to the Bank at 31st March, £1,442,000 due by the Estates Company, on which 5% interest was being charged, which was not being earned. "Whilst the magnificent portion of the business which is sound might enable the Bank to stagger along under its load, the entanglement with the Estates Company is such that without severance from it, the Bank can no longer carry on. The Board of the Bank . . . . . have decided to request the Government to take steps to prevent disaster . . . . . it is imperatively necessary that action should be taken by the Government by way of further legislation, to be declared before the shareholders' meeting takes place; otherwise the

necessary disclosures would imperil the existence of the Bank."

A Joint Committee of both Houses was thereupon appointed to enquire into the position of the Bank and the Estates Company. The result of this Committee's deliberations was that there was revealed a total deficiency of £1,340,468 to be provided for.

The Annual Meeting of 30th August, 1895, was adjourned until 6th September, as the "Bank of New Zealand and Banking Act, 1895," the outcome of the above Joint Committee's report, was before the House. It was passed on 4th September, 1895. The provisions of this Act were of a revolutionary nature, and severely affected the position of shareholders, and were the cause of widespread criticism throughout the Colony. No doubt, in the light of subsequent events, the Act was a wise measure and was in the interests of the Colony as a whole and probably in the interests of the shareholders, at least those that survived and held their shares. The sacrifices, however, which the shareholders were called upon to make were very severe.

The main provisions of the new Act were that:—

- (1) The paid-up Capital of £900,000, the Reserve Fund of £45,000, also the proceeds of the call of £3/6/8 already made, being part of the Reserve Liability, be written off.
- (2) Government to take up £500,000—3½% Preferred Shares.
- (3) A further call of £3/6/8 per share to be made on the shareholders, representing a further one-third of the Reserve Liability, and this amount to constitute the new capital of the Bank.
- (4) Remaining £3/6/8 to be reserved and only called up to liquidate any deficit resulting in connection with the repayment of the Assets Realisation Board debentures. (See below).
- (5) Future net profits of Bank, after payment of dividend on Guaranteed Stock and Preferred Shares to be appropriated (a) £50,000 to Assets Board, (b) 5%

dividend on Ordinary Shares, (c) Residue to Assets Board.

- (6) The £1,000,000 hitherto to be held invested under the "Share Guarantee Act" now to be used in the ordinary business of the Bank.
- (7) Government to appoint one Director.
- (8) Assets Realisation Board to be created and Estates Company to sell out to this Board as at 31st March, 1895, for £2,731,706—the purchase money to be paid by an issue of  $3\frac{1}{2}\%$  debentures with a currency of nine years secured by a floating charge over the Assets of the Board and a sufficient number of the debentures to be retained to provide for outstanding Estates Company debentures. Any ultimate deficiency in redeeming the Assets Board debentures to come out of the Consolidated Fund of the Government of New Zealand, but in event of there being any such deficiency all profits from the Bank beyond 5% dividend to continue to be devoted towards repaying such loss to the Government. Assets Board to consist of three members—two appointed by the Government and one by the Bank.
- (9) The Bank authorised to purchase another Bank.
- (10) No director or official of the Bank of New Zealand to be allowed an overdraft from the Bank.

The loss of capital was stated at the meeting of 6th September to be due chiefly to losses now ascertained in connection with the Estates Company properties. The Chairman said: "The present deficiency in the assets to be taken over by the Assets Board is computed at £850,000." In addition to this, the Bank's Balance-sheet at 31st March, 1895, besides showing a loss of £37,356 for the year, showed "Bad and Doubtful Debts £422,281." The writing off of Capital, £900,000; Reserve Fund, £45,000, and the proceeds of the first call of £3/6/8 per share estimated to produce £450,000, were to cover these various losses. The shareholders' meeting eventually passed a resolution according a vote of thanks to Parliament for the timely assistance rendered to the Bank and to the President and Directors for the efforts they had made to

conserve the interests of the shareholders and to put the Bank on a solid foundation.

The authority to purchase another Bank, contained in the Act of 1895, was at once availed of and resulted in the taking over of the Colonial Bank of New Zealand on 18th November, 1895, and also the acceptance of its General Manager, Mr. Henry MacKenzie, as General Manager of the Bank of New Zealand.

The full details of the purchase were disclosed in 1896 to a Committee (of which more anon) set up by Parliament to examine into the affairs of the Bank of New Zealand and its allied Companies and the Colonial Bank of New Zealand. The accounts of the Colonial Bank were minutely investigated by Messrs. B. M. Litchfield and W. B. Buller, Inspectors of the Bank of New Zealand. "These gentlemen appear to have treated the accounts severely, and to have been most careful in guarding the interests of the Bank of New Zealand. Their view of the Colonial Bank's accounts was less sanguine than those of the General Manager of that Bank, and the President of the Bank of New Zealand. The Directors of the Bank of New Zealand preferred to take the advice of their inspectors, and the evidence adduced before this Committee shows that under the stringent system of liquidation adopted, their estimates have proved more correct." (Report of Committee).

The Colonial Bank advance accounts were "taken to pieces," and four lists, A, B, C and D, were drawn up. "A" list, £926,197, were the good accounts; "B" list, £604,695, contained doubtful accounts, and this list was subsequently divided into "B" and "C" lists, and cover to the amount of £327,205 was taken from the Colonial Bank to provide for any loss on these accounts; "D" list, £102,274, was not taken over, and "C" list was also, at a later date, rejected. The sum of £75,000 was given for the goodwill of the business of the Colonial Bank and its premises were taken over at the book value of £125,000, though realisable value was estimated to be some £30,000 less. The Committee stated that "the evi-

dence all goes to show that the purchase was a desirable one and that the Bank of New Zealand made a good bargain."

It was reasonable to expect that the Balance-sheet figures of the amalgamated institutions at 31st March, 1896, after the recent severe overhauling of both institutions, would form a bedrock basis on which could now be built up, with the existing sound and extensive business of both banks, a really solid banking structure. This, almost certainly, would have been the case had not the Bank at this juncture been again dragged into the political arena and for months been subject to the publicity of a searching enquiry into its past and present history, at the hands of a Parliamentary Committee. Ostensibly this Committee was set up to enquire into the circumstances leading up to the Bank's requiring the assistance of the Government, and to the circumstances surrounding the purchase of the Colonial Bank. The underlying purpose was more probably to exonerate Mr. J. G. Ward, Colonial Treasurer, from the charges of his political opponents that he engineered the purchase of the Colonial Bank by the Bank of New Zealand for the purpose of, and in the hope of, saving the former Bank from liquidation likely to be forced upon it, partly owing to the heavy indebtedness of the Ward Farmers' Association, which was in a precarious position. Mr. Ward (later Sir Joseph Ward) was the chief shareholder in, and Managing Director of, the Ward Farmers' Association.

Political feeling ran high during these years of the Seddon regime, and much of the bitterness of the Government's opponents was directed at its financial head. The fact that the Ward Farmers' Association was heavily indebted to the Colonial Bank, and that its affairs were involved, that the Colonial Bank purchase had been approved by the Government, of which Mr. Ward was Colonial Treasurer, and finally that the position of the Colonial Bank was subsequently found to be far from sound, gave much piquancy to the enquiry, and the enquiry, no doubt, gave much satisfaction to Mr. Ward's political enemies. The history of the negotiations for the purchase are dealt with under the head of the "Colonial

Bank of New Zealand," but it is sufficient to say here that the result of the Committee's enquiry so far as Mr. Ward was concerned was that "your Committee is of opinion that Mr. Ward ought, when he became aware that his financial position was seriously involved, to have acquainted his colleagues in the Government, and that he ought to have tendered his resignation of the office of Colonial Treasurer. Considering the financial position of the then Colonial Treasurer, and having in view the necessity that was then known to exist for negotiating for the purchase of the Colonial Bank, and of the passing of legislation to give effect to the same, and the knowledge that those transactions and that legislation must necessarily affect him, it was, in the opinion of the Committee extremely unfortunate that Mr. Ward should have continued to hold the office of Colonial Treasurer. Your Committee think it right, however, to state that they found no evidence to show that Mr. Ward was associated with the negotiations for the purchase of the Colonial Bank."

The Committee, however, by no means confined itself to this phase of the enquiry, though the Opposition Members on the Committee endeavoured to make this the major issue. The enquiry covered the affairs of the Bank of New Zealand since 1888, and included minute enquiry into all the doings and misdoings of directors and executive officers from that date until 1896. The enquiry commenced on 16th July and continued until 30th September of that year. Day after day, directors, and executive officers of both Banks were interrogated and cross-examined, and the results served up in the daily press. A dramatic incident occurred at the very commencement of the enquiry. The first witness called was Mr. Wm. Watson, President of the Bank of New Zealand. Very early in his examination he point-blank declined to discuss or give any information with regard to individual banking accounts—basing his refusal on the deed of secrecy he had signed in connection with his appointments. His attitude, of course, completely blocked the apparent intention of at least some members of the Committee of enquiring into the Ward



Farmers' Association's affairs, and also accounts of previous Directors of the Bank of New Zealand. Mr. Watson's refusal was referred to the Speaker of the House, who stated it was "indefensible," and Mr. Watson was committed to the custody of the Sergeant at Arms and later in the sitting was fined £500. The Bank had to pay it. However, his attitude was warmly commended by bankers and business men, and had a very material effect in limiting the scope of the enquiry mainly to principles rather than to persons. Mr. Watson was subjected to examination day after day from 15th August to 9th September, 1896, and one cannot but be struck, on reading the report, with his ability, and his courage in adhering tenaciously to his point of view in spite of the severity of the cross-examination, not to say browbeating, by some members of the Committee which consisted of Messrs. John Graham (Chairman), Hon. R. J. Seddon, Hon. John Mackenzie, Hon. Major Steward, Messrs. A. Guinness, Geo. Hutchison, Maslin, McGowan, Montgomery and Tanner.

Needless to say, the enquiry was injurious to the Bank's business, and so far as one can judge achieved no valuable purpose. It served to ventilate the political animosities of some of the members of the Committee. It no doubt was an opportunity to give publicity through those members to the grievances of the disgruntled shareholders of both banks, but its aggregate effect on the public mind was inimical to the best interests of the country, and was an influence adverse for many years to the recovery of New Zealand from its economic troubles. The Bank and the country would have made a better and a quicker recovery if the Government of the day had had the courage at this stage to leave the Bank alone, instead of being jockeyed into holding the enquiry at the behest of its political adversaries.

The findings of the Committee were, that ascertained and estimated losses of the Bank of New Zealand, written off since 1888, were £4,040,799; that dividends paid during the period were £265,688, none of which should have been paid. It recommended early realisation of properties held by the

Estates Company. It considered that the Balance-sheet of the Colonial Bank at 31st August, 1895, did not disclose the true position; that losses made by the Bank of New Zealand prior to 1888 were due to errors of judgment and gross mismanagement of directors and officers, but held that present Directors were not responsible; that the office of President should be abolished and a new General Manager appointed; that the number of directors be increased to eight, three representing shareholders, three appointed by Government, one by the House of Representatives, and one by the Legislative Council, the Chairman with right of veto to be selected by the Government; that the true position of the Bank had now been placed before the Committee; and recommended that the business of the Bank be confined as far as possible to New Zealand, except for the purpose of exchange.

The outcome of this enquiry was the "Bank of New Zealand and Banking Act Amendment Act 1898," the chief provisions of which were:—

- (1) Board of Directors to consist of six members, of which four were to be appointed by the Government and two by the shareholders.
- (2) Office of President to be abolished and compensation of £4,500 to be paid to the President—Mr. Wm. Watson.
- (3) The Directors to elect their own Chairman, who was to hold office for one year, but was eligible for re-election as Chairman.
- (4) Power of veto revoked.

We next find the shareholders at the General Meeting held in December, 1898, electing two Directors as their representatives and those two were Mr. Wm. Watson, who has, without a break for 36 years since, represented the shareholders on the Board, and Mr. Martin Kennedy, who continued as shareholders' representative until his death in 1916. The Government appointees did not include any of the old directors, who had done remarkably good service. During their four years of office they had succeeded in turning an annual loss into a

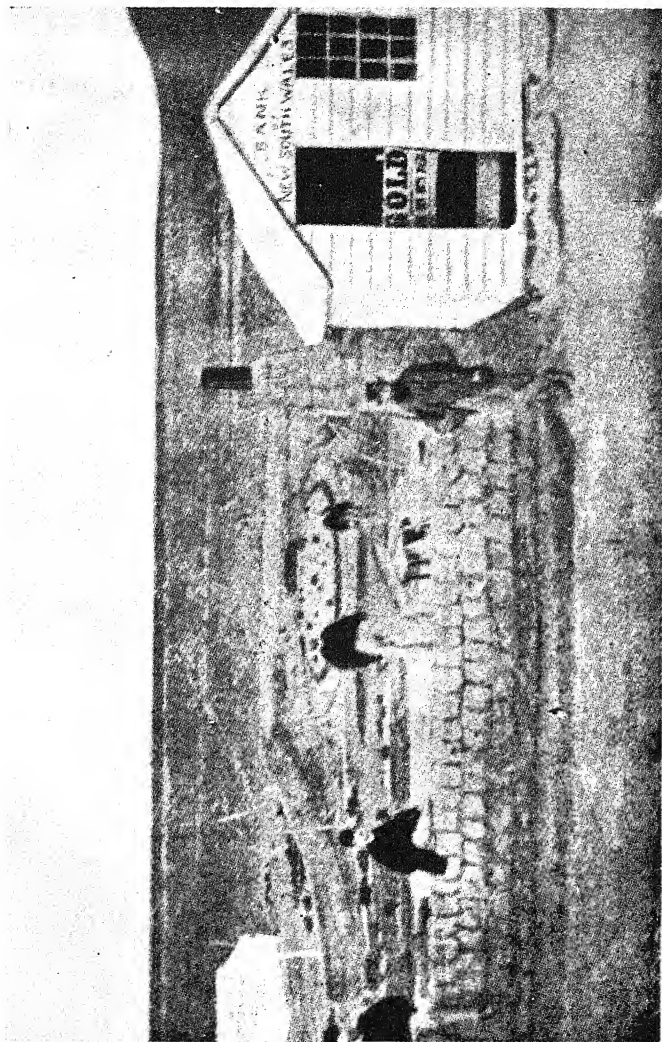
considerable yearly profit and laid the foundation of the Bank's later progress. The new directors included Mr. (now Sir) Harold Beauchamp, who was later to become Chairman of Directors. The new General Manager was Mr. C. G. Tegetmeier, late of the Bank's London Office, who, however, resigned at the end of 1899.

The Bank's history from this point has been one of substantial progress and increasing profits, though the whole of those profits were devoted during the next few years, outside the statutory payment of £50,000 to the Assets Realisation Board, to writing down intangible Assets, such as Colonial Bank Goodwill A/c, old Estates Company accounts, and Colonial Bank premises. It was not until 1902 that ordinary shareholders again received a dividend, and that was 5% only, which rate was continued until 1906.

In 1901 the Bank repurchased from the Crown the £500,000 3½% Preference Shares, in terms of the "Bank of New Zealand and Banking Act, 1895," and they were available for re-issue.

In 1902 the profits of the Bank of New Zealand were sufficient to pay the above referred to dividend of 5%, besides writing down substantially intangible assets. The Chairman pointed out that since 1895 the Bank had, out of profits, written down such Assets by £800,873. This year also the Bank made a contribution to the "Officers Guarantee and Provident Association" to assist in placing that fund on a sound actuarial basis.

In 1903 the "Bank of New Zealand Act, 1903," was passed, more particularly in view of the fact that the £2,000,000 Guaranteed Stock and the Assets Board debentures were maturing in 1904 and provision had to be made for their repayment or renewal. The Act provided that the ordinary shares should be of the value of £6/13/4, of which £3/6/8 had been called up and that the Preferred shares, £500,000, which had been repurchased by the Bank, should be cancelled, and Preference Shares, £500,000 (75,000 at £6/13/4), should be issued to the Government. These Preference Shares were to



*The premises of the Bank of New South Wales, Cromwell, Central Otago, in 1864.*



carry a 5% dividend as long as the dividend paid on ordinary shares did not exceed 5%, but if it should do so, then the Preference Shares were to carry one-half of such excess, i.e., if 6% be paid on ordinary shares, then  $5\frac{1}{2}\%$  would be paid on the Preference Shares, but the dividend on Preference Shares was limited to 10%. The Bank was authorised to redeem the existing £2,000,000 Guaranteed Stock and re-issue £1,000,000 4% Guaranteed Stock with a currency of 10 years, the Bank's profits after payment of interest on Guaranteed Stock to be applied (1) £50,000 to Assets Board; (2) Dividend of 5% on (a) Preference Shares, (b) Ordinary Shares, (3) Residue to Assets Board. The Chairman was to be elected in April of each year.

With regard to the assets of the Assets Realisation Board, these were to be valued in 1904 and in 1908 (and in between if desirable) and if the assets were then deemed sufficient to meet the Board's liabilities the Board was to cease to exist and the assets to again vest in the Bank, and the Bank to redeem the outstanding debentures of the Board. In the meantime the existing debentures of the Board were to be replaced by fresh debentures with a currency of five years.

The Bank's prosperity in the years immediately following was such that in 1906 the necessary steps were taken under the above Act to have the assets of the Assets Board valued with a view to their being taken over by the Bank and the Board abolished. The valuation showed a surplus of assets over liabilities and on 17th December, 1906, the Board was dissolved. At the half-yearly meeting of shareholders on the 21st December, 1906, a dividend of 5% for the half-year was declared—the first interim dividend since 1894, and a further 5% (making 10% for the year) was declared in the following June.

It is to be noted that throughout the years since 1895 the Bank had practically no Reserve Fund, the amount in 1896 being the nominal amount of £23,418, and it remained at practically that figure until 1904 and for the following three years the only additions were premiums received on the sale

191749

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—108

of forfeited shares. The Reserve Fund amounted to only £81,294 at 31st March, 1907, but it was then brought up to £250,000 by an appropriation from the previous year's profits.

The following years showed marked and steady progress, and in 1911, the Jubilee Year of the Bank, the Chairman was able to announce a dividend and bonus for the year of 15%, and that the Reserve Fund had reached £1,000,000, a wonderful result in the short period which had elapsed since the time when the Bank's affairs had been in so parlous a state. The Reserve Fund had been accumulated (with the exception of £81,294) in the short space of five years.

By 1913 the Reserve Fund had reached £1,375,000, and at the Annual Meeting in June of that year, in view of the necessary legislation to be passed during the coming Parliamentary session owing to the £1,000,000 Guaranteed Stock maturing in 1914, Mr. Martin Kennedy advocated, on behalf of the shareholders, that the Guaranteed Stock should be paid off and the shareholders should now have control of the Bank. On being asked to disclose the nature of the proposed legislation the Chairman (Mr. Beauchamp) declined to do so, or to allow any discussion thereon, though Mr. C. P. Skerrett, K.C. (later Sir Charles Skerrett, Chief Justice) amongst others, took strong exception to his attitude, and to the treatment of shareholders in this connection.

A meeting of shareholders was consequently called for 4th July, 1913, and presided over by Mr. Martin Kennedy. The Directors appointed by the Government were not present at this meeting. A series of resolutions were moved by Mr. Skerrett, and in an able address he advocated that "now that the liabilities (to the Government) were extinguished, the shareholders had the inalienable right to have restored to them the management and control of their own business." The resolutions were that (1) the £1,000,000 Guaranteed Stock be paid off, (2) the authorised capital be increased by £2,000,000, (3) £1,000,000 to be issued at once and offered in the first instance to existing shareholders, (4) Directors elected by the shareholders be increased to four and those

appointed by the Government reduced to two, the powers of Chief Auditor to be maintained. These resolutions and one or two of a minor nature were carried unanimously, and an influential Committee was set up to safeguard the interests of the shareholders.

In spite, however, of these actions the "Bank of New Zealand Act, 1913," was passed shortly after and contained the following provisions:—

The Bank to have power (a) to redeem the £1,000,000 Guaranteed Stock and to issue a further amount of £1,000,000 at 4% with a currency of 20 years, and (b) to increase the Capital by £3,000,000 in the form of 150,000 B. Preference Shares of £6/13/4, to be first offered to the Crown, and 300,000 Ordinary Shares of £6/13/4, all the shares, if desired, to be issued at a premium; (c) but power to issue further shares was limited to this Act or any subsequent Act, and (d) individual shareholder's maximum holding was increased to 6,000 shares.

The Committee of shareholders circularised shareholders, informing them of their failure to achieve their objects owing to the Government's opposition to their proposals, the only major concessions obtained being the understanding that the uncalled £3/6/8 per share would be called up within seven years, and that the shareholders were to have greater rights in the matter of discussing in General Meeting all questions of general policy relating to the business of the Bank. The Committee had obtained the opinion of the Full Court upon the questions raised in the resolutions passed by them on 4th July, and the decision of the Court had been adverse to the shareholders.

The outbreak of the Great War in August, 1914, immediately affected the financial position, but the Bank made no losses in London as a result of the difficult position arising there on declaration of War. Beyond a temporary fall in the value of English investments generally, the Bank was not affected owing to the very safe nature of the business transacted by the London office. The effect of the War on banking



generally in New Zealand has already been referred to in Chapter I.

It is to be noted here that when the 4% Guaranteed Stock matured in London on 19th July, 1914, "the Bank's finances being in a strong position, the Board decided not to underwrite the new issue, but to give the existing holders the option of exchanging their Stock," which they did to the extent of £529,988/10/6. This stock matured on 19th July, 1934, and the amount was duly paid or made available to the holders on that date.

At 31st March, 1915, the Reserve Fund was increased to £2,000,000, chiefly due to the 50% premium received on the new £250,000 "B" Preference Shares issued to the Government, and on the £500,000 Ordinary Shares, part of the fresh capital authorised by the 1913 Act.

The War years, though a period of intense strain on the people generally and of deep distress to so many, were years of wonderful financial prosperity to the country as a whole. Whilst the cost of living increased exceedingly, the returns from our exports also increased, and whilst wages, of necessity, rose to figures previously unknown, the profits of industry also were greater than had been previously experienced. The total figures of the Bank's Balance-sheet at 31st March, 1914, were £24,400,250 and at 31st March, 1919, £43,213,706, but the profits in 1919 were only £459,221, as compared with £388,490 in 1914. The capital was about the same as in 1914, but the Reserve Fund stood at £2,200,000 as compared with £1,375,000. The additional profits of the War years were chiefly absorbed by taxation, which in 1914 amounted to £57,000, but in 1919 reached £386,272.

In January, 1920, the shareholders were given the long-awaited opportunity of increasing their capital in the Bank, as the £3/6/8 per share uncalled was called up by consent of the Minister of Finance, and, needless to say, the opportunity was readily availed of, the Ordinary Share Capital being thereby increased by £500,000, making it £1,500,000.

The year 1920 was a noteworthy year. The profits were the highest to date, enabling an increase to  $17\frac{1}{2}\%$  to be made in the dividend, besides a very fine donation of £100,000 to the Bank's Staff Provident Fund. The Reserve Fund was brought up to £2,500,000. This year also saw the inauguration of a salary "scale" for junior officers on a more liberal basis than hitherto.

In 1920 also was passed the "Bank of New Zealand Act, 1920," the main provisions of which were:—

No further Guaranteed Stock to be issued.

£1,125,000 to be transferred from Reserve Fund to Capital Account. The whole existing capital to be cancelled, except Guaranteed Stock and replaced by £1 shares, i.e.:—

(a) £500,000 "A" Preference Shares;

(b) £625,000 "B" Preference Shares;

(c) £2,250,000 Ordinary Shares.

The "A" and "B" Preference Shares were to be issued to the Government, the ordinary shareholders receiving ten £1 shares for each existing £6/13/4 share held.

The Bank was authorised to issue new capital of £2,250,000, consisting of 750,000 "B" Preference Shares and 1,500,000 ordinary shares. The profits of the Bank were to be distributed as follows:—

Repealed } (a) £50,000 o/a "A" Shares.

in 1926. } (b) £306,250 in proportion of 1/7th to "B" shares, 6/7ths to ordinary shares.

(c) If over £356,250, 1/3rd of excess to go to "B" shareholders, and 2/3rds to ordinary shareholders.

Shareholders' Directors to hold not fewer than 1,000 shares.

Term of appointment of Directors, appointed by the Government, to be for three years. Directors' remuneration to be £5,000 p.a.; divided as they may decide.

A shareholder may hold as many proxies as shareholders may entrust him with. One shareholder may hold up to 60,000 shares.

The effect of this capitalising of £1,125,000 of the Reserve Fund was beneficial to both the Government and the shareholders, and though the rate of dividend on ordinary shares came down to  $13\frac{1}{2}\%$  instead of  $17\frac{1}{2}\%$ , the amount received was greater. Also the dividing of the shares up into £1 shares was an advantage both to the shareholders and the Bank.

The years 1921 and 1922 were years of depression, but the Bank's strength enabled it to pass through the period with little effect on its progress.

In July, 1923, a further issue of shares was made to the extent of £1,125,000—£375,000 "B" Shares to the Government and £750,000 ordinary shares to the shareholders at par.

At March, 1924, the general conditions showed a marked improvement, and the surplus on realisation of British Government securities, and provision previously made for bad debts and not now required, enabled the Bank to add the very large sum of £500,000 to the Reserve Fund.

Further substantial progress was shown for the years ending March, 1925 and 1926.

In 1926 the "Bank of New Zealand Act, 1926," was passed, containing the following provisions:—

- (1) Authority to increase the capital by £1,406,250 in £1 shares to be called *Long Term Mortgage shares*, consisting of two classes, "C" shares and "D" shares—in proportion of 1 to 2, the "C" shares to be offered to Crown.
- (2) "C" shares to have a fixed preferential, but non-cumulative dividend of 6% and "D" shares  $7\frac{1}{2}\%$ .
- (3) Both classes of shares to rank for dividend and in a winding-up after "A" Preference shares and in priority to "B" Preference shares and Ordinary shares.
- (4) The profits to be distributed:—
  - (a) £50,000 to "A" shares.
  - (b) 6% to "C" Long Term Mortgage shares.
  - (c)  $7\frac{1}{2}\%$  to "D" Long Term Mortgage shares.

- (d) Of the residue up to £306,250— $\frac{1}{7}$ th to "B" Preference shareholders, and  $\frac{6}{7}$ ths to Ordinary shareholders, and of any excess of £306,250,  $\frac{1}{3}$ rd to "B" shareholders and  $\frac{2}{3}$ rds to Ordinary shareholders.
- (5) Long Term Mortgage shareholders to have no voting rights.
- (6) Long Term Mortgage capital may be cancelled by resolution of shareholders and repaid at par, plus interest accrued since last dividend.
- (7) Bank also authorised to borrow money for Long Term Mortgage Department by issue of debentures or stock with a currency up to 37 years, at such rate of interest as the Directors may determine, to an amount not exceeding three times the amount of Long Term Mortgage shares issued.
- (8) Debentures to be secured by way of floating charge upon the Long Term Mortgage Fund and investments representing same, and to be Trustee investments.
- (9) The Long Term Mortgage Fund to consist of proceeds of shares and debentures issued under this Act which shall be used for purpose of loans on first mortgage of freehold or leasehold lands in New Zealand—term not more than 37 years, and limited to  $\frac{3}{4}$ rd value of freehold and  $\frac{1}{2}$  value of lessees' interest in leaseholds, and rate to be not more than 6%.
- (10) Remuneration of Directors increased to £6,500.

In terms of this Act, the Bank in 1927 issued £234,375 "C" Long Term Mortgage shares to the Government, and £468,750 "D" Long Term Mortgage shares to the shareholders, and in 1929 placed an issue of £300,000 Long Term Mortgage Debenture Stock on the market at an interest rate of  $5\frac{1}{2}\%$  with a term of 10 years, but as the Government about the same time issued a  $5\frac{1}{2}\%$  Loan on the local market, the Bank withdrew the issue after £107,050 had been taken up. In 1930, £500,000 in 5% Stock was issued in London.

It cannot be said that the demand for loans from the Bank under the terms of the Act reached the expectations of those responsible for the inauguration of this new department.

The Loans Current at 31st March, 1934, seven years after these facilities were made available, amounted to only £1,106,095, and these are by no means confined to loans to farmers, on whose behalf such facilities were chiefly made available in the original instance. However, the fall in prices of agricultural and pastoral products since 1929, and the consequent difficulty in arriving at land values have made lending on farm lands a hazardous investment. No doubt when stability of values is again reached, this department will further extend its operations.

The progress of the Bank over the last seven years to 31st March, 1934, clearly reflects the general economic conditions which have affected New Zealand in conjunction with the rest of the world. The years 1928 and 1929 were the "peak" years of its history; at 31st March, 1929, the distributable profits were £1,146,158, which included an amount of £212,004, representing provision previously made for "doubtful advances not now required." £275,000 was added to the Reserve Fund after paying the dividend and bonus of 14½%. The following years showed lessened results, and at 31st March, 1932, the net profits were shown as £608,222, and for the first time since 1907, no addition was made to the Reserve Fund. Owing to the large profit and loss balance carried forward from previous years, the Bank was able to pay its usual dividend, but had to encroach on the "carry forward" in order to do so. At 31st March, 1933, the net profits were £615,469, the ordinary dividend being reduced to 11¼% for the year, and at 31st March, 1934, net profits were £594,231 and the dividend was reduced to 10%.

It may be appropriately stated here that the Government of New Zealand have done remarkably well from their association with the Bank of New Zealand. The public purse has benefited from dividends received from 1895 to 1933 by no less than £3,515,878, and the average return on the capital invested by the Government over the period equals 10¼%. It cannot be said that the Government and people of New Zealand have not

received full compensation for such risk as they took in coming to the assistance of the Bank in the 'nineties.

Finally, even though, as a result of world conditions, the contraction of, and losses from, banking business results in lessened profits temporarily, there is no question as to the Bank's emergence from the 1930 to 1934 depression in renewed strength, possibly the greater because of the enlightening experience of these years.

In concluding this brief history of the Bank of New Zealand, it is desirable to make some passing reference to the men who, in the position either of General Managers or Directors, have been most prominent in building up the Dominion's leading banking institution.

The first General Manager was Alexr. Kennedy, the D.L. Murdoch previously referred to being appointed Inspector. Mr. Kennedy occupied the position from the commencement of the Bank in 1861 until 1868, when the position of General Manager was abolished. Mr. Murdoch continued as Inspector and Chief Executive Officer until 1888, and although the Bank's position at the close of his connection with it was not satisfactory, the progress and prosperity of the Bank through its previous 26 years of existence indicated his ability and organising capacity. The economic conditions of the late 'eighties and early 'nineties seriously affected the Bank's position, as they did the position of every financial institution in Australasia, and the tendency of the times, and the outcome of the Parliamentary enquiry of 1896, was to throw blame on the Bank's Directors and executive officers for much that, viewed now in perspective and especially with the experiences we are now passing through to guide us, was largely justifiable. That too optimistic an outlook had resulted in unwise advances, that some directors were not altogether free from blame in connection with their personal dealings with the Bank, and that the delay in facing the position was a material factor in the later disastrous losses incurred, is all too true; but the basic cause of the

Bank's troubles of those days undoubtedly lay in economic world conditions over which the Bank had little control.

Mr. William Watson, whose long connection with the Bank has already been referred to, expressed before the Parliamentary Committee of 1896—and since that date has reiterated his opinion—that many unjust charges have been levelled at the management of both the Bank of New Zealand and the Colonial Bank for losses due to circumstances over which the managements of both Banks had no control, and after a careful analysis of the complete Balance-sheets and Reports of these and other institutions, and with the searching investigation into conditions in New Zealand leading up to the troubles of the 'nineties as contained in Professor J. B. Condliffe's "New Zealand in the Making," to guide us, we consider Mr. Watson's contentions have much to justify them.

Following Mr. Murdoch, a number of General Managers were successively appointed:—Mr. John Murray, Mr. G. E. Tolhurst, Mr. J. M. Butt, Mr. W. T. Holmes, Mr. C. G. Andrews, Mr. Henry Mackenzie, Mr. C. G. Tegetmeier, Mr. James Embling, Mr. Alex. Macintosh, and Mr. Alex. Michie, each of whom occupied the position for too short a period to leave any great impress on the Bank's history. From 1894 to 1898 Mr. William Watson, as President of the Bank, was the dominating personality controlling its affairs.

In 1907 Mr. Wm. Callender was appointed General Manager and continued in office until January, 1920, when Mr. (now the late Sir) Henry Buckleton, previously Manager at Auckland, was appointed to succeed him. It was a fortunate appointment for the Bank, its shareholders and its staff, for the post-war years brought with them banking problems of exceptional difficulty requiring a wide knowledge of finance, a long view, and courage and ability of a high order. The Bank's position to-day, compared with 1919, and in spite of these last four or five years of unexampled depression, indicates that its late General Manager possessed in a marked degree the qualities needed. It was a matter for gratification to the Bank and its staff, and indeed to the banking commu-

nity of New Zealand generally, when in 1929 His Majesty conferred the honour of Knighthood on the Bank's chief executive officer. Sir Henry retired on 31st December, 1933, and was succeeded by Mr. F. W. Dawson.

During the 73 years of its existence the Bank has seen many Directors come and go, and it is hardly within the scope of this work to attempt to deal with their varied influence on the progress of the Bank. It is, however, worthy of special mention that the speech of the Chairman of the Bank delivered at the Annual Meeting of the Proprietors, has for many years past been considered one of the most important public financial pronouncements of the year, and the speeches of the late Mr. F. de C. Malet, of Sir Harold Beauchamp and Sir George Elliot, who each occupied the Chair for a number of years, have reached a high standard. We do not think we are making any invidious distinction in saying that Sir Harold Beauchamp's addresses in this connection during, and immediately after, the war years were a very helpful contribution in dealing with the many problems which faced the people of New Zealand for a number of years. In this year (1934) he has once more been elected to that position by his fellow directors. Mr. R. W. Gibbs, who was Chairman of Directors in 1933, joined the Bank's service over fifty years ago and rose from Junior Clerk to Inspector, and was later appointed Government Auditor. He has since been one of the Shareholders' representatives on the Board for a number of years, and so has rendered a lifetime of service to the Bank. It is interesting also to record that Mr. William Watson has on two occasions occupied the position of Chairman. The Bank has been fortunate in its Chairmen of Directors, who have done much to add to the prestige of the institution over whose councils they have presided.

The London Board have also included many men of distinction and ability who have rendered the Bank and the people of New Zealand through the Bank, services of the greatest value, and have done much to give the Bank that



definite and honoured place in the financial circles of the City of London which it occupies to-day.

As this Dominion of New Zealand progresses and increases in population and importance so this already great institution must grow with it and continue to render service and give strength to its people.

## **(2) The National Bank of New Zealand Ltd.**

“The National Bank of New Zealand Ltd. is the last created of the Anglo-Australasian Banks, having their head offices in London” (“The Banking Institutions of Australasia”—R. L. Nash, Melbourne, 1889).

The Prospectus is dated London, 15th August, 1872, and states: “The object of the formation of this Institution is to extend to the Colony of New Zealand the additional Banking accommodation which the recent rapid increase of the population and remarkable development of the Mineral, Pastoral and Agricultural resources of the Colony so urgently demand; and the intimate acquaintance of the Founders with the position and requirements of the Colony enables them to submit with confidence a scheme for the establishment of the National Bank of New Zealand . . . . . It is felt that the time has now arrived when the circumstances of the Colony warrant the provision of those facilities for trade which can only be obtained by the co-operation of local experience and local interests with extraneous influence and Capital . . . . . The Directors . . . . . believe that the Capital to be called up can be safely and profitably employed without encroaching on the field already occupied by similar institutions.”

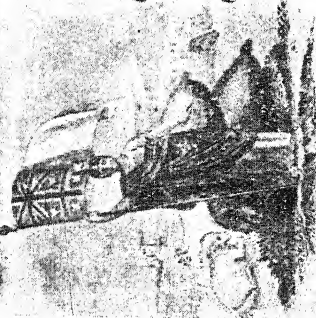
The capital of the new Bank was quoted as £2,000,000 in £10 shares. A first issue of £1,000,000 was made, two-thirds of which were issued in London and one-third in New Zealand, £2/10/- per share being the amount paid on application and allotment.

The Bank of Otago Limited,

N<sup>o</sup> A54559

DUNEDIN.

ONE



Payable to pay the Bearer on  
demand of PRESENTED, on Cash here  
A54559

ONE

For the Directors and Proprietors.

*Handwritten signature: Wm. McKinnon*

Courtesy of W. E. Monk, Esq.  
The Bank of Otago Limited, which issued the note depicted above, was, in 1874, absorbed by  
The National Bank of New Zealand, Ltd.



The first Directors were:—

Charles Magniac, M.P. (Chairman), of Matheson & Co.,  
3 Lombard Street, E.C.

Dudley R. Smith, of Samuel Smith Bros. & Co.—Bankers,  
Hull.

Col. Sir Thomas Gore-Browne, K.C.M.G.—formerly  
Governor of New Zealand.

Sir Charles Clifford—formerly Speaker of the House of  
Representatives in New Zealand.

Alexander Grant Dallas—late Governor of Ruperts Land  
and Director of the Hudson Bay Company.

Dr. J. E. Featherston—Agent-General for New Zealand—  
previously Superintendent of Wellington  
Province for 18 years and member of the  
House of Representatives.

Wm. Smillie Grahame—late of Auckland, New Zealand.

Edward Brodie Hoare—of Barnett Hoare Hanbury &  
Lloyd, Bankers, 62 Lombard Street, E.C.

John Morrison—late Colonial Agent for New Zealand.

Wm. Whitbread—of Whitbread & Co., Chiswell St., E.C.

The flotation of the new venture was entirely successful, double the amount of the necessary capital was subscribed in London and for the 33,333 shares allotted to New Zealand applications for 41,719 were received, 847 of the 1,600 odd shareholders being New Zealanders. ("The Imperial Banks"—A. S. J. Baster, London, 1929).

The first Inspector and General Manager to be appointed was Mr. Adam Burnes, who arrived in New Zealand in February, 1873. An arrangement had already been made with the Directors of the Bank of Otago Ltd. for transfer of their business to the new Bank and a call on shareholders of £1 per share was made for this purpose in the early part of 1873. "The business of the Bank of Otago in the Colony was taken over on 1st July, 1873, and the sum of £189,597/11/2 representing its Assets taken over, with interest thereon, from that date, as agreed, has been

paid to the Liquidators in London" (Report to Shareholders, 25th August, 1874).

With regard to the National Bank of New Zealand Ltd., Baster says "local antagonism was also evinced in New Zealand . . . . . the National Bank had an uphill fight" ("The Imperial Banks"—pp. 141-142). The Bank "was not accorded a very generous reception by the existing Banks. The application for the Act of Incorporation encountered very strong opposition . . . when the Bank was opened it met with very severe competition at the hands of the older Banks" (Baxter—"Banking in Australasia," London, 1883).

In spite of this, however, the Bank made steady progress and was able in January, 1875, to declare a first dividend of 6% on its paid up Capital of £350,000.

A general idea of the Bank's financial progress, with its occasional set-backs, can be gathered from the figures given herewith, showing Capital, Deposits, Note Circulation, Reserve Fund, Net Profits, and Dividend paid during each year of its existence:—

<i>Date.</i>	<i>Note Circulation.</i>	<i>Deposits.</i>	<i>Paid up Capital.</i>	<i>Net Profits.</i>	<i>Reserve Funds.</i>	<i>Div. &amp; Bonus.</i>
	£	£	£	£	£	%
1872	—	—	166,667	—	—	—
1873	—	—	250,000	1,102	—	—
1874	112,724	680,753	350,000	1,565	—	—
1875	132,925	919,443	350,000	26,866	—	6
1876	118,956	940,385	350,000	15,552	—	6
1877	107,935	1,102,593	350,000	21,468	—	6
1878	107,963	1,482,435	350,000	21,049	—	6
1879	112,948	1,470,464	350,000	30,786	—	6
1880	99,596	1,576,814	350,000	20,807	10,000	6
1881	103,390	1,543,798	350,000	24,167	10,000	7
1882	108,698	1,506,266	350,000	24,620	10,000	7
1883	121,801	1,523,821	350,000	24,587	10,000	7
1884	107,927	1,870,221	350,000	20,971	10,000	6
1885	107,987	1,753,957	350,000	8,750	10,000	2½
1886	97,376	1,622,820	250,000	14,892	—	5
1887	95,536	1,587,788	250,000	14,395	—	5
1888	94,383	1,528,517	250,000	8,732	—	5
1889	101,703	1,534,877	250,000	17,117	—	5
1890	108,362	1,847,256	250,000	19,143	—	5
1891	114,343	1,941,457	250,000	18,166	10,000	2½

Date.	Note Circulation.	Deposits.	Paid up Capital.	Net Profits.	Reserve Funds.	Div. & Bonus.
	£	£	£	£	£	%
1892	107,545	1,613,609	235,816	19,334	—	5
1893	116,439	1,605,026	247,383	16,343	—	5
1894	110,513	1,434,365	248,147	16,998	—	5
1895	109,822	1,534,641	249,106	16,431	—	5
1896	124,600	1,904,178	250,000	18,090	20,000	5
1897	142,515	2,139,227	250,000	21,461	20,000	5
1898	151,391	2,208,927	250,000	25,538	30,000	5 & 1
1899	180,790	2,279,180	250,000	40,966	40,000	6 & 1
1900	211,605	2,510,754	250,000	42,347	60,000	7 & 1
1901	236,045	2,553,255	250,000	55,785	80,000	8 & 2
1902	252,339	2,732,951	250,000	64,934	110,000	8 & 2
1903	257,104	2,838,523	250,000	54,533	150,000	10
1904	273,515	3,043,440	250,000	60,643	180,000	10 & 2
1905	247,126	3,218,481	250,000	49,906	210,000	10 & 2
1906	268,872	3,440,455	250,000 New Capl. 24,292	67,858	230,000	10 & 2
1907	283,628	3,681,398	375,000	87,401	300,000	10 & 2
1908	267,134	3,760,526	375,000	90,544	325,000	10 & 2
1909	247,177	3,853,871	375,000	93,423	350,000	10 & 3
1910	268,559	4,306,295	375,000	92,874	375,000	12
1911	272,680	4,296,328	500,000	106,095	460,000	12 & 1
1912	268,270	4,357,925	500,000	120,759	480,000	12 & 1
1913	257,985	4,229,439	500,000	135,492	500,000	12 & 1
1914	255,899	4,304,654	750,000	144,896	645,000	12 & 1
1915	465,515	4,740,397	750,000	149,763	665,000	12 & 1
1916	535,665	5,298,296	750,000	143,528	685,000	12 & 1
1917	918,026	5,472,552	750,000	153,644	700,000	12 & 1
1918	1,702,381	5,656,903	750,000	148,995	715,000	12 & 1
1919	1,177,271	6,481,557	750,000	186,882	730,000	12 & 1
1920	828,009	8,856,133	1,000,000	256,298	1,000,000	12 & 2
1921	981,781	8,296,492	1,000,000	326,821	1,020,000	12 & 2
1922	2,031,451	8,243,237	1,000,000	212,726	1,040,000	12 & 2
1923	1,729,434	9,261,899	1,250,000	228,746	1,250,000	12 & 2
1924	936,541	11,442,153	1,250,000	243,934	1,260,000	12 & 2
1925	943,843	10,822,911	1,500,000	279,826	1,470,000	12 & 2
1926	955,629	10,438,468	2,000,000	333,087	1,980,000	12 & 2
1927	1,058,710	11,283,316	2,000,000	312,275	2,000,000	12 & 2
1928	1,173,482	12,088,015	2,000,000	289,803	2,000,000	12 & 2
1929	1,297,385	10,567,019	2,000,000	290,581	2,000,000	12 & 2
1930	1,115,973	12,165,675	2,000,000	282,917	2,000,000	12
1931	940,475	11,657,302	2,000,000	208,286	2,000,000	10
1932	961,152	12,314,328	2,000,000	177,836	2,000,000	7
1933	1,019,477	13,767,816	2,000,000	116,448	2,000,000	4
1934	1,111,224	15,595,886	2,000,000	95,673	2,000,000	4

From these we learn that, after paying a dividend of 6% from 1875 to 1880, and 7% from 1881 to 1883, 6% only was paid in 1884, and 2½% in 1885.

The effect of the depression of the 'eighties being reflected in the value of securities held by the Bank to cover advances, the Directors wisely faced the position, and in 1885 wrote £1 per share off Capital. They also wrote off the Reserve Fund of £10,000, as well as the balance to credit of Profit and Loss, and appropriated the amounts thereby obtained to making provision for losses already made or expected to be made. Also two New Zealand Directors were, at the annual meeting held in London in July, 1885, appointed to assist in safeguarding shareholders' interests in New Zealand—the gentlemen appointed being Mr. Edward Pearce, of Wellington, and Mr. James Rattray, of Dunedin.

From 1886 to 1890, the Bank's business suffered from the continued depression, and though a 5% dividend was maintained during this period, the published figures show no progress. In June, 1891, the Directors considered it desirable to address the following circular to shareholders:—

**THE NATIONAL BANK OF NEW ZEALAND LIMITED.**

---

71, Old Broad Street,  
London, E.C.  
19th June, 1891.

Sir,

It is a matter of common knowledge that for many years past Banking in New Zealand has been conducted under exceptional conditions not unattended with risk, and although the long period of depression and consequent depreciation seems to show signs of passing away, the effect of it has been to reduce the present value of Securities in such manner as to render necessary the provision of a competent Fund to guard against possible loss.

Since 1885, when means were taken to meet the losses then known or estimated, great care has been exercised in the conduct of the business of the Bank, and your Directors are glad to think that a valuable and safe business has been maintained, though, in particular cases, there have been such losses as might be expected, and in others, a degree of weakness exists, indicating the necessity of time and careful handling if loss is to be avoided. The actual ascertained losses have been written off, but there have not been means available to provide for possible deficiencies upon Accounts

which are still current, or the Securities attaching to which remain for realisation.

If the general Profits had been large enough to admit of the payment of Dividends at a low rate, and at the same time allow of the accumulation of a considerable Reserve out of Profits, the course to be pursued would have been perfectly simple, namely, to postpone any Dividend beyond, say, 5 per cent. until the Reserve had attained such a figure as to fully cover all possible risks. In the actual circumstances, it has not been practicable to do much, after writing off losses, beyond providing for a Dividend at the rate just mentioned, and your Directors have felt that to arrest the payment of such a Dividend would have done more harm than good. A non-Dividend paying Bank does not attract business of any description, but tends towards dissolution.

The course which your Directors feel bound to propose is the writing down of the Assets to such a figure as would be low enough to meet the views of a careful and well-informed purchaser; at the same time calling up a sufficient amount of new Capital to put the Depositors at their ease. Your Directors hope and believe that sensible views will prevail both amongst Customers and Shareholders, and that their action in thus facing the full amount of possible loss and rendering the position of the Bank absolutely safe will meet with ample support.

The figure to which upon careful consideration your Directors recommend that the Paid-up Capital should be written down is £100,000, thus treating the sum of £150,000 as no longer represented by available Assets. To effect this, it will be necessary to pass and confirm the Resolution referred to in the Notice printed on the back of this Circular. When this has been done, and the necessary sanction of the Court (which is required by the Companies Acts) obtained to the reduction, your Directors propose that a call of £1/10/- per share should be made, which will realise £150,000. After these measures the Bank will have a Capital paid up of £250,000, not only worth par on any reasonable valuation, but likely to reach a premium before long; there will also be an uncalled sum of £500,000, which your Directors consider should permanently remain.

Your Directors have consulted with Messrs. Freshfields & Williams, the Bank's Solicitors, and with Messrs. Welton, Jones & Co., the Auditors appointed by the Shareholders, who concur with them in thinking the step proposed the best for the Bank. It will entail the omission to declare a Dividend for the half-year ending 31st March last, not because the business has been unprofitable, but for the reason that a reduction of Capital must receive the



sanction of the Court, grounded upon the fact that a certain sum "is not now represented by available Assets." So soon as the reduction has been carried out, and the Call received, profits exceeding those which have lately been earned should accrue, because (1st) all the existing Assets will remain increased by the £150,000 to be called up, and (2nd) much is to be hoped from the gradual return of better times in New Zealand.

Your Directors are so sure that in this matter they have arrived at a decision essentially necessary to secure the welfare of the Bank that they feel bound to make the acceptance of the Resolution a question of confidence, and in the event of its rejection will feel obliged to place their seats at the disposal of the Proprietors, at the next Ordinary General Meeting to be held in July.

If you are willing to support the policy of the Directors, please sign the enclosed Proxy and return it to the Secretary, 71, Old Broad Street, so that he may receive it before 2 o'clock on Saturday, the 27th inst.

I am, Sir,

Your Obedient Servant,

(Signed) E. Brodie Hoare,  
Chairman.

As the outcome of this action an informal Committee of the larger shareholders on the London register spent a week or two in investigating the affairs of the Bank, and the result of their enquiry is embodied in the following report by them to shareholders:—

**REPORT OF THE INFORMAL COMMITTEE**, appointed 29th June, 1891, to consider the present position and business of the NATIONAL BANK OF NEW ZEALAND, and the constitution of the Board of Directors.

The Committee have had placed before them the whole of the books and papers they required, and have had several interviews with the Secretary and Auditor, who have afforded all the information in their power.

The result of this investigation shows that most of the losses had occurred prior to 1886—the estimate of probable loss made at that time having been largely exceeded,—many firms to whom advances had been made, and who were regarded at that time as sound, being unable to meet their engagements on account of the continued commercial depression in New Zealand.

The Committee find that mistakes have been made, both in London, and the Colony, in continuing accounts where increased

loss appeared probable, and there is no doubt too sanguine a view was taken when prosperity appeared to be reviving in the Colony, and the fact was not sufficiently recognised that prosperity although advancing was gradual and very slow.

The amount proposed to be written off the capital appears—judging from the books, papers, reports from the Colony, and information placed before the Committee by the Chairman, Auditor and officials—to be sufficient to cover the losses incurred to the present time, and they have no hesitation in recommending that the resolution passed at the recent Meeting be confirmed, as being the only one calculated to place the Bank on a solid foundation.

It is satisfactory to find the Bank is doing a large and profitable business, and there is every ground for hope that the Bank will share in the gradually increasing prosperity of the Colony, especially if a more cautious policy is pursued in future by both Managers and Directors.

With reference to the amount of land held by the Bank as collateral security for advances in New Zealand, the Committee deemed it advisable to have the fullest details placed before them, and they find the Bank holds, as collateral security for debts regarded as doubtful, land of the value of £24,028, and, as collateral security for accounts considered good, land of the value of £279,179. These amounts are very far below what were generally believed, and should be most reassuring to Shareholders and all persons interested.

With regard to the constitution of the Board:

The Chairman having stated at the recent meeting of the Shareholders that the Directors had authorised him to say that if the resolution was passed they would place their seats in the hands of the Committee, and were perfectly ready to abide by their decision, the Committee carefully considered to what extent it may be expedient to accept this offer. They have come to the conclusion that, in the interest of the Bank and for the satisfaction of the Shareholders, it is requisite that a considerable change should be made in the composition of the existing Board. They recommend that the number of London Directors should be reduced to six, and that no fresh appointment of a Colonial Director should be made. They understand that the following gentlemen are prepared to serve on the Board if it should please the Shareholders to appoint them: Mr. E. Brodie Hoare, Mr. James Macandrew, Mr. J. M. Stobart, Mr. Steele, Mr. Thomas Seaber and Mr. Philip Vanderbyl, and they recommend that these gentlemen be appointed accordingly. They likewise think that in the present condition of the Bank the remuneration of the London Board should be limited to £2,000 annually.

The question of the general reduction of expenditure has occupied the attention of the Committee, and, with this object, they have examined the Books. They find the salaries generally on a very moderate scale, and they are not prepared to recommend any reductions in salaries. An ill-paid servant never conduces to good management; but they would venture to suggest to the new Board the necessity of a thorough investigation into the nature and amount of business done at each of the Branch Banks, with the view of considering as to how far it will be advisable to continue, with due regard to the interest of the Bank, any branch which during the last six years has failed to show any satisfactory profit.

With regard to the call of Thirty shillings per share sanctioned at the last meeting, the Committee desire to say that in their judgment such call is necessary for the well-being of the Bank and to afford confidence of depositors; and the Paid-up Capital will certainly not be more than is sufficient, after the call has been paid, for the efficient working of the Bank.

The following facts should be generally known:—

- 1st.—The Bank is not in immediate want of money, the cash in hand being larger than for many years past.
- 2nd.—The resources available are quite sufficient to meet every demand and the depositors are amply secured by the uncalled capital; the shares being generally held by responsible persons.

The Committee cannot conclude this report without expressing their conviction that the first duty of the new Board of Directors will be to satisfy themselves that they possess in the Managers of the several Branches, men upon whose judgment, discretion and firmness they can place full reliance, for these qualities are essential to the successful working of any Bank.

The Committee have no desire to dictate to the Board the policy they should pursue, or to define the nature of their investigation of the repeated mistakes which have led to the present position of the Bank, and the loss of so large a proportion of the Capital; but they feel strongly that upon the thoroughness of the investigation made by the new Board will materially depend the future prosperity and sound position of The National Bank of New Zealand.

Signed on behalf of the Committee,

J. C. Lawrence,  
Chairman.

Subsequently at the General Meeting on 27th July, 1891, a resolution was unanimously confirmed "That the

Capital of the Company be reduced from £1,900,000, divided into 190,000 shares of £9 each, being the shares already issued, and 100,000 shares of £10 each, being the shares unissued, to £1,750,000, divided into 100,000 shares of £7/10/- each, being the shares already issued, and 100,000 shares of £10 each being the shares unissued, and that such reduction be effected by cancelling Capital which has been lost or is unrepresented by available assets to the extent of £1/10/- per share upon each of the 100,000 shares which have been issued and are now outstanding and by reducing the nominal value of such shares from £9 to £7/10/-."

By this action in again meeting courageously and frankly a position, which was due to economic conditions far more than to any want of care in administration of the Bank though, no doubt, errors of judgment had been made (and what concern did not make such errors in those trying and depressing days in this Colony?) the Bank was able with equanimity to pass through the following severe banking troubles of the 'nineties, and to consistently pay its 5% dividend until 1897, followed by 6% in 1898, 7% in 1899, 8% in 1900, and 10% thereafter until 1903—and better Dividends still in the following years. There is no doubt that 1891 was the "turning point" in the National Bank's career, when had a less courageous policy been adopted, such course might have resulted in liquidation, instead of the foundation being laid of a sound and consistently successful Banking Institution of which those who have contributed to its success during the last forty years may well be proud.

No further alteration took place in the Paid-up Capital of the Bank until 1906, when 50,000 shares to be paid up to £2/10/-, were offered to existing shareholders at a premium of £1 per share and were readily taken up. The Bank was at this time paying a Dividend and bonus of 12%. In 1910 the above process was repeated at a premium of £1/5/- per share, the Capital paid up thus being increased to £500,000, and the Reserve Fund by the accumulated

profits and share premiums reaching £460,000 at 31st March, 1911.

In July, 1912, authority was obtained to increase the authorised Capital from £1,725,000 to £3,000,000, and in March, 1913, a further 100,000 shares were offered to shareholders on similar terms to the previous issue and were as readily subscribed for. In spite of the increased Capital, the Dividend and bonus were maintained from 1909 (except 1910, 12%) at 13% until 1920, when they were increased to 14%.

In 1919, in addition to issuing a further 50,000 shares to shareholders, but at a premium of £3/- per share, a further 50,000 shares were taken up by Lloyds Bank, and this Bank was, under the agreement then entered into, to hold one-eighth of the capital and to have about one-twentieth of the voting power, and was entitled to appoint one Director. The object of the partnership was "a working alliance with some strong Bank . . . . . upon equitable terms and without being absorbed so as to lose our individuality . . . . . to enable us to obtain Capital needed . . . . on the best possible terms." (Mr. W. P. Reeves's Report to Shareholders, 9th July, 1919). It was realised that the aftermath of the War would bring its financial problems and such an alliance would be a great strength to the National Bank in the days that were to come.

The effect of these issues was to increase the Paid-up Capital to £1,000,000, and at 31st March, 1920, the Reserve Fund also reached £1,000,000 the Dividend and bonus being increased from 13% to 14%, as stated above.

Early in 1922 it was deemed advisable to seek authority to increase the authorised capital from £3,000,000 to £4,500,000, and a further 100,000 shares were issued paid up to £2/10/- and at a premium of £2 per share, and a similar issue was again made in May, 1924.

Further authority was obtained in 1924 to increase the authorised Capital to £6,000,000, and in May, 1925, 200,000 shares were issued, and paid up to £2/10/- per share, the

premium paid on this issue being £2/10/- per share. The effect of these issues is that the Capital of the Bank is fully subscribed, the Paid-up Capital being £2,000,000, and Uncalled Capital £4,000,000. The Reserve Fund reached £2,000,000 at 31st March, 1927, and has not since been added to. Of the £2,000,000 Reserve Fund, £1,387,500 is represented by premiums on new share issues.

The Bank continued to pay its 14% dividend and bonus until 1929, but the present period of depression, commencing in that year resulted in a reduction of dividend to 12% in 1930, 10% in 1931, and 7% in 1932, 4% in 1933, the Bank wisely deciding to follow a conservative policy in the matter of dividend, to the ultimate benefit, no doubt, of its shareholders.

Let us now turn from balance-sheet figures to glance at the men who are mainly responsible for the undoubted success of this banking institution. Primarily that success should, we think, be credited to the General Managers who have controlled the affairs of the Bank in New Zealand. Following Mr. Adam Burnes, the first General Manager, who resigned in 1881, came Mr. William Dymock, who controlled the affairs of the Bank from its Head Office in Dunedin until 1893. His period of office covered the most trying period of the Bank's existence, and though losses were made and Capital lost, we think it may be safely assumed that with less able management in those difficult times, the Bank could hardly have weathered the storm.

In 1893, Mr. James H. B. Coates was appointed General Manager and the Head Office of the Bank was removed to Wellington. The new General Manager was an outstanding personality, an able and shrewd banker, with personal qualities of a very high order. We think it may be here stated that Mr. Coates (popularly and affectionately styled "Jim" by his large circle of friends and acquaintances) was, during those active years of his life, one of the best known and most popular figures in the public life of New Zealand. He continued in office until 1914 and was then appointed a

Director, from which position he resigned in 1921. In 1922, which was also the fiftieth year of the Bank's existence, he received the honour of knighthood, and it is pleasing to state that in this year, 1934, he is still, though now in his 83rd year, living in pleasant retirement in Auckland. It is interesting to record that Sir James Coates was in 1894 offered the Presidency of the Bank of New Zealand at first declined by Mr. Wm. Watson. Sir James declined on the grounds that his Directors would not release him from his engagement.

Following Sir James Coates, Mr. D. W. Duthie was appointed in 1914 and continued in office during the trying periods covering the Great War and the following "slump" period of 1921 and 1922. He resigned in 1922 owing to ill-health, and unfortunately did not long survive his retirement. Mr. Alfred Jolly followed him, and on his death was succeeded by Mr. G. W. McIntosh in 1925. Mr. McIntosh died in 1928 and the present General Manager, Sir James T. Grose, was appointed, having previously occupied the position of Chief Inspector for New Zealand of the Bank of New South Wales. Sir James received the honour of knighthood in 1933.

The National Bank has also been fortunate in its various Chairmen of Directors. The first was Mr. Charles Magniac, M.P., who held office from 1872 until 1883, followed by Mr. Edward Brodie Hoare, an able London Banker, in 1884. Mr. Brodie held office during the most critical years of the Bank's existence and retired in 1892. Mr. James Macandrew, who had been Deputy Chairman, was then appointed Chairman and held the position for the following ten years. On his death in 1902, Mr. Robert Logan, who had been a Director since 1896, was elected Chairman and remained in the position until 1916. In 1917 the Hon. Henry Stuart Littleton was Chairman, but in 1918 the Hon. Wm. Pember Reeves replaced him, and most ably filled the position until his death in 1932. The present Chairman of Directors is Sir Austin E. Harris, K.B.E.

Apart from their conspicuous abilities, the long terms of office held by most of the various General Managers and Chairmen of Directors, of the National Bank of New Zealand Ltd. have resulted in their absorbing a deep and abiding knowledge of the Bank's affairs, and in a continuity in the Bank's policy. These factors have had a material influence in the successful building up of a banking institution, which though floated in London and having its Head Office in London, we may fairly describe as an entirely New Zealand institution.

Under the control of its present very able General Manager, Sir James Grose, we have no doubt that the National Bank will continue to grow in strength and in the esteem in which it is held by the business and farming community of New Zealand.

### **(3) The Union Bank of Australia Limited.**

The Prospectus of the Union Bank of Australia is dated "London, 1st September, 1837," and states (*inter alia*):

"In the establishment of a Bank of Issue and Deposit under the above title the Directors are chiefly impressed with a conviction of the importance of meeting the increased demand for Capital in the Australasian Colonies and are desirous in the establishment of their Banks in New South Wales, Van Diemen's Land, and other Australasian settlements to identify to the utmost of their power the interests of the Colonists with their own . . . . . a local currency, based upon a capital affording unquestionable security, is much wanted and loudly called for."

This Bank, after a successful flotation in London, immediately acquired the Tamar Bank, of Van Diemen's Land (Tasmania), and branches were established at Sydney, Hobart, Launceston, Campbelltown (Van Diemen's Land), and Melbourne, and at "New Zealand" by desire of the New Zealand Company, the first branch opened being at Port Nicholson (Wellington), followed very shortly by a branch at Nelson.



The Union Bank has a very special interest to the people of New Zealand in that it has been identified with the financial history of this country from its very earliest beginnings. The following is a copy of an advertisement which appeared in the *New Zealand Gazette* of Friday, 6th September, 1839, which was the first number of the *Gazette* newspaper issued in New Zealand, though printed in London:—

UNION BANK OF AUSTRALIA,

London Office, 38 Old Broad Street.

*Directors*—George Fife Angas, Esq.; Robert Brooks, Esq.; James John Cummins, Esq.; Robert Gardner, Esq.; Manchester; John Gore, Esq.; Charles Hindley, Esq., M.P.; Benjamin Ephraim Lindo, Esq.; Charles Edward Mangles, Esq.; Christopher Rawson, Esq., Halifax; Thomas Sands, Esq., Liverpool; James Bogle Smith, Esq.; James Ruddell Todd, Esq.

*Trustees*—George Carr Glyn, Esq.; John Gore, Esq.; James John Cummins, Esq.

*Bankers*—Messrs. Glyn, Hallifax, Mills, and Co.

*Solicitors*—Messrs. Bartlett and Beddome.

*Secretary*—Samuel Jackson, Esq.

COLONIAL ESTABLISHMENTS.

*Colonial Inspector*—John Cunningham Maclaren, Esq.

At Sydney, New South Wales.

*Local Directors*—Thomas Gore, Esq.; Rannulph Dacre, Esq.; Philip Flower, Esq.; S. K. Salting, Esq.

*Manager*—Mr. Maclaren.

*Accountant*—Mr. James Sea.

At Hobart Town, Van Diemen's Land.

*Local Directors*—Alfred Garrett, Esq.; Joseph G. Jennings, Esq.; Atkin Morrison, Esq.

*Manager*—Cornelius Driscoll, Esq..

*Accountant*—Mr. David Kennedy.

At Launceston.

*Local Directors*—Michael Conolly, Esq.; William Fletcher, Esq.; Philip Oakden, Esq.; Thomas Williams, Esq.

*Manager*—Lewis W. Gilles, Esq.

*Accountant*—Mr. John Hartridge.

At Campbellton—Sub-branch.

*Agent*—John McLeod, Esq.

At Melbourne, Port Philip.

*Local Directors*—John Gardner, Esq.; — Rucker, Esq.

• *Manager*—William Highett, Esq.

NEW ZEALAND BRANCH.

*Local Directors*—George Samuel Evans, Esq.; D.C.L.  
Edward Betts Hopper, Esq.; George Hunter, Esq.

Arrangements having been made for the opening of a Branch in New Zealand, notice is hereby given that bills on Sydney at thirty days' sight will be issued at this office to the settlers for such sums as may be required, at a charge of two per cent., redeemable in New Zealand in the notes of this Bank, with a return of the two per cent., thus enabling the colonists to transmit their funds without deduction.

The Directors likewise continue to grant letters of credit payable at sight, for any sum not exceeding £300, and bills, at thirty days' sight, to any amount, on their Branches at Sydney, Hobart Town, Launceston, and Melbourne, Port Philip, at the usual terms.

By order of the Board.

SAMUEL JACKSON, Secretary.

The Directors of the New Zealand Land Company hereby give notice that they have effected an arrangement with the Directors of the Union Bank of Australia; in pursuance of which, a Branch of the Union Bank will be established forthwith on the Company's First and Principal Settlement.

The Directors therefore recommend to the Colonists the Union Bank of Australia, as a means of effecting their pecuniary transactions with convenience and security.

By Order of the Directors.

JOHN WARD, Secretary.

New Zealand Land Company's Office,

1 Adam Street, Adelphi,

20th August, 1839.

It is also of passing interest to residents of Wellington that the same issue contains the names of the Directors of the New Zealand Land Company to whose efforts and enterprise we owe so much in the early settlement of New Zealand:—

*Governor*—The Earl of Durham.

*Deputy Governor*—Joseph Somes. •

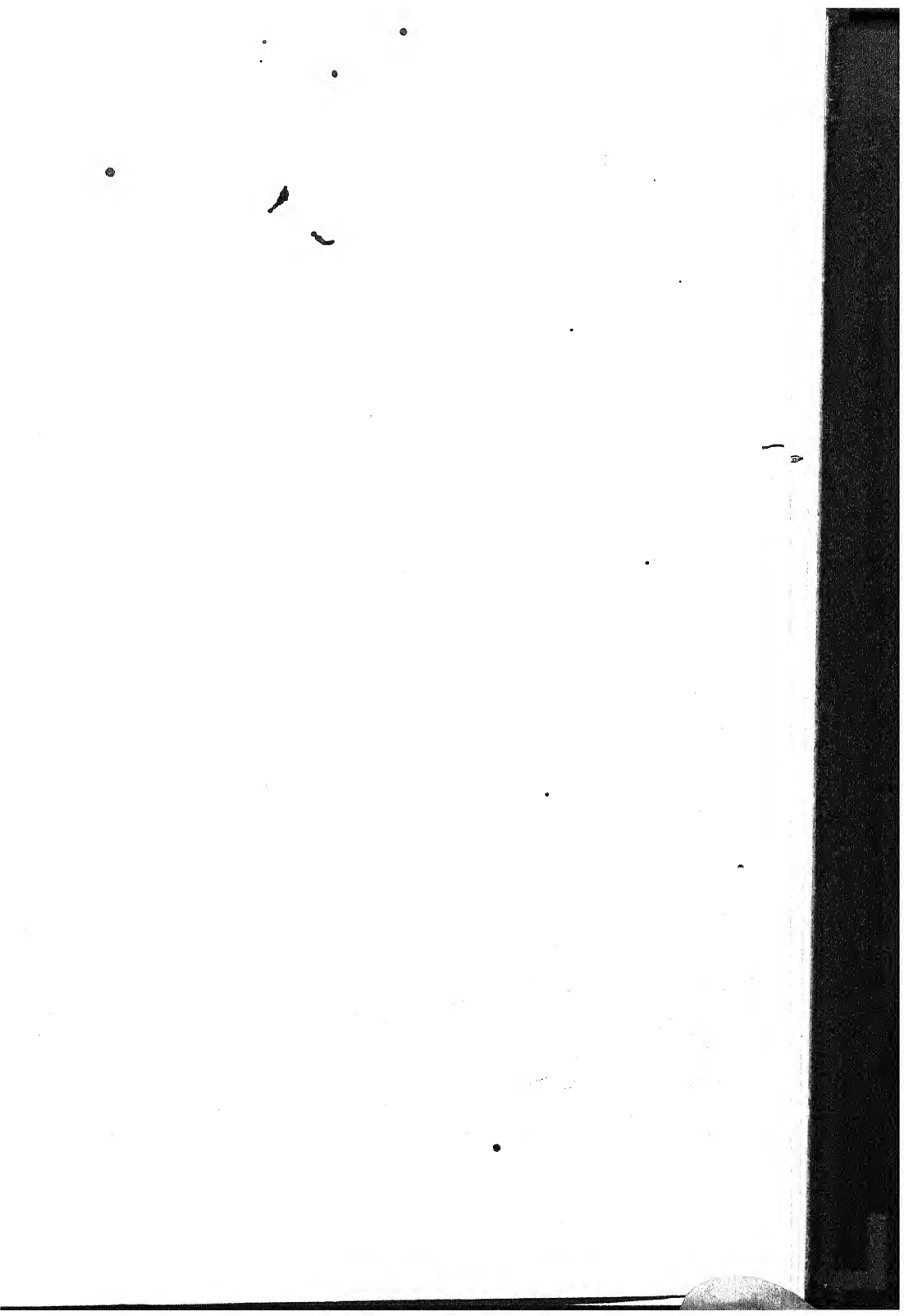
*Directors*—Lord Petre

Hon. Francis Baring, M.P.  
John Ellerker Bouzott  
John William Buckle  
Russell Ellice  
James Brodie Gordon  
Thomas Alers Hankey  
Wm. Hutt, M.P.  
Stewart Marjoribanks  
Sir Wm. Molesworth, Bt., M.P.  
Alexander Nairne  
John Pirie  
Sir George Sinclair, Bt., M.P.  
John Abel Smith, M.P.  
Wm. Thompson, M.P.  
Sir Henry Webb, Bt.  
Arthur Willis  
Geo. Frederick Young.

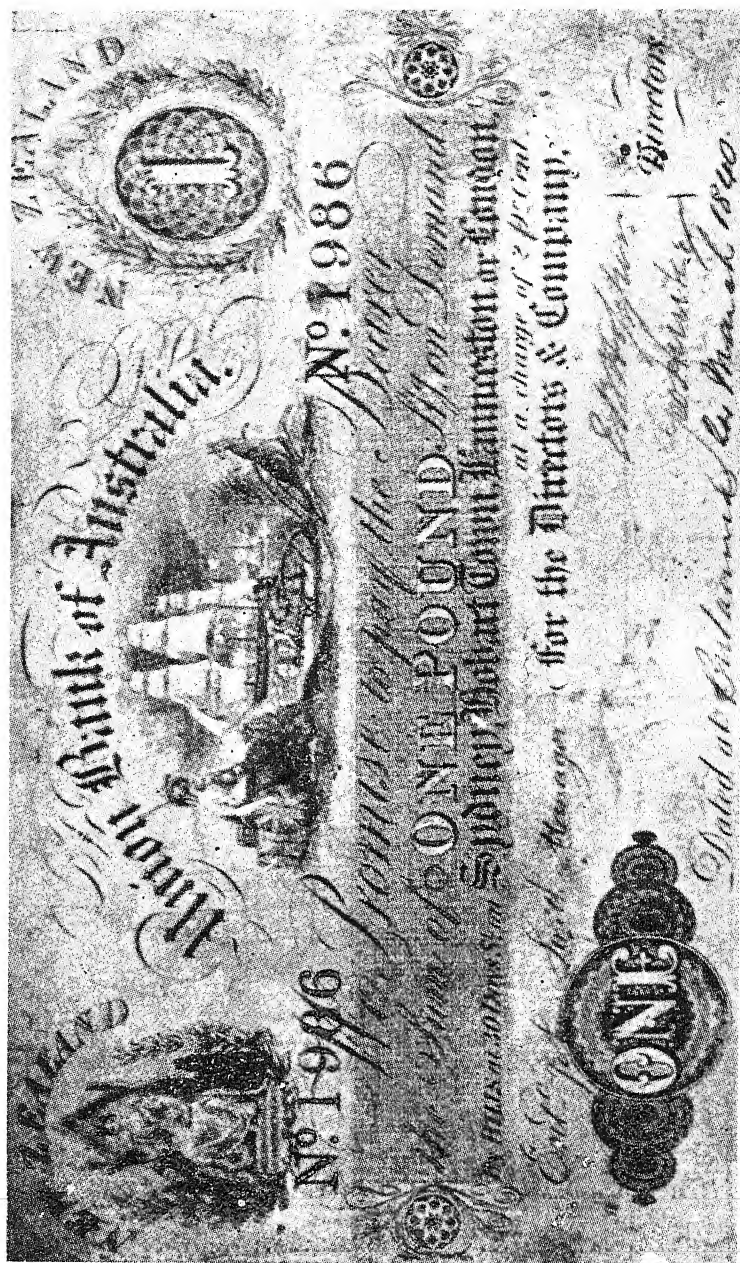
The memories of most of these men are perpetuated in the names of the Hutt district, and Somes Island, and of the principal streets of the Capital city.

The first branch in New Zealand was opened on the beach at Petone, where a new town named "Britannia" was partially laid out. The site of the town was changed in 1840 to the opposite side of the harbour owing to floods. In "Early Wellington" (by Louis E. Ward), page 288, reference is made to "Pito-one, then called Britannia." This name was retained when the change of site was made to the other side of the harbour, but the alteration to the name of Wellington was proclaimed by notice in the *Gazette* dated 27th August, 1841.

"The Directors of the Company (New Zealand Land Company) signified to their principal agent their earnest wish that the town founded on the shores of Lambton Harbour might be named after the Duke of Wellington in order to commemorate the important support which His Grace had lent to the cause of colonization in general. The settlers took up the view of the Directors with great cordiality and the new name was adopted." ("Early Wellington"—L. E. Ward, page 71).



(To face page 79).



Courtesy of the Union Bank of Australia, Ltd.

The original note is in the possession of the Union Bank of Australia, Ltd., Wellington, N.Z., to whom it was presented for payment in 1934, and was duly honoured. The note was dated 17 days after the bank was established at Britannia (Pito-one).

The Union Bank, recognising the need for a transfer to the shores of the new township, towards the end of 1840 took steps to make the move. Louis E. Ward, in "Early Wellington," states on page 34 that the "Glenbervie" arrived on the 7th March, 1840, and carried the Manager, clerks and well-lined safe of a branch of the Union Bank of Australia; and with reference to the transfer of the branch from Petone Beach to Thorndon he says, on page 66, "With due solemnity the bank's safe was floated over on a raft." Apparently, however, the raft was only used to transport the safe from the beach to the barque "Brougham," as E. J. Wakefield in his "Adventure in New Zealand," states on page 283:—

"The Company's barque 'Brougham' had been employed in transporting the more bulky articles across the harbour. Among these was the iron safe of the bank, which had arrived in the 'Glenbervie,' containing the specie and notes which were to form the currency of the settlement. Mr. John Smith, the Manager, showed great anxiety during the transit of the safe, and having been observed by the natives sitting upon its summit as it lay on the deck, acquired from them the title of 'Jacky Box,' by which he was ever afterwards known among all shades of colonists."

The Bank occupied temporarily a tin shed on the beach, but the first real Wellington premises were opened in "Lombard Street," which is situated off Manners Street and was possibly given that name because of its banking significance. In 1852 a move was made to Willis Street to the site at present occupied by the Hotel St. George, the Manager's house being at the rear in Boulcott Street. The present site was not occupied until 1876, when more central quarters became necessary. These premises were destroyed by fire in 1906, and, unfortunately, many early records were destroyed in the conflagration, which also gutted a number of prominent business premises, and partially destroyed the newly-built premises of the Bank of New South Wales.

In the second Report of the Directors presented at the General Meeting of the proprietors in London, on 25th June, 1840, the following references to the Bank's connection with New Zealand are of interest:—

“ During the first year a satisfactory arrangement has been made with the New Zealand Company for the transaction of their monetary affairs and the establishment of a Branch in their first settlement. Mr. John Smith has been entrusted with the management of this establishment, a gentleman peculiarly suited by his experience and ability for such a trust.”

Mr. Smith, apart from his banking duties, apparently assisted in many ways to promote the welfare of the new settlement, and amongst other of his activities may be mentioned one in which he took a leading part, the opening of the first library in Wellington. Books in those days were a far more precious commodity than the present generation with its wealth of cheap literature can conceive of, and the establishment of a library was an undertaking of some importance.

The local Directors appointed in New Zealand were Dr. G. S. Evans, D.C.L.; Mr. E. B. Hopper, and Mr. Geo. Hunter—the last-named becoming the first Mayor of Wellington. The above three names are perpetuated in Evans Bay, Hopper Street, and Hunter Street, all well-known to residents of Wellington. It appears that the name of John Smith, New Zealand's first banker, is deserving of a similar honour, and probably would have been so honoured except perhaps that the name was John Smith!

In 1841 the Directors' Report stated that “ The New Zealand Branch (Wellington) must still be considered in its infancy—only a few weekly returns have as yet been received (in London). The Directors, however, see no cause to regret their having acceded to the wishes of the New Zealand Company in its establishment.” In the Report of 1842 the Directors further stated, “ During the past year your Directors have made preparations for establishing a branch at the

No. 1

At Thirty days sight

To the order of my self the

Value received

To The Secretary of the

New Zealand Company

London

266

113A  
522

EXCHANGE FOR £ 500

STERLING.

by this draft of Exchange (second and third not paid)

Five hundred Pounds

which place to account

We have heard

Agent of the New Zealand

Company

London

W. D. Young  
Wellington December 1<sup>st</sup> 1840

the "New Zealand Gazette" Office

Courtesy of Dr. G. H. Scholefield,  
Librarian, General Assembly Library, Wellington, N.Z.

Facsimile of draft drawn by William Wakefield, Agent of the New Zealand Company, on the company in London. The original bears the endorsement of the Union Bank of Australia.





settlement of Nelson, in New Zealand. This has been done in accordance with an arrangement already stated to have been made with the New Zealand Company and your Directors have great satisfaction in stating that the success which has attended the branch at Port Nicholson justified a more extensive connection with the operations of that highly respectable body." Mr. Alexander McDonald was appointed Manager at Nelson.

Local Directors were no longer required by 1844, and the Directors' Report of 19th January, 1846, strikes a somewhat different note from the extracts quoted above: "The Branches in New Zealand have been greatly reduced during the half-year and may now be regarded rather as small exchange agencies than as branch banks. The Inspector has announced his determination not to allow them to be increased until he is fully satisfied of the security and prosperity of these Colonies."

The following extracts from later reports are also of interest:—

*20th July, 1846.* "It has been stated in a previous Report that the Branches in New Zealand had been almost reduced to small Exchange Agencies. They have therefore yielded scarcely any profit during the past year. The Directors trust that a more favourable state of things will soon arise in these fine islands and they will yet afford a large remunerative field for British enterprise."

*24th January, 1848.* "In New Zealand the Branch at Wellington, although restricted within very cautious limits, is doing a safe and profitable business; at Nelson the transactions are confined to a small agency; but at both Branches there are strong indications of gradual improvement."

*17th July, 1848.* "The improvement which has taken place in the internal condition and general circumstances of the New Zealand Colonies has induced the Inspector to open a Branch at Auckland, the seat of Government, to which Mr. Alexander Kennedy has been appointed Manager."

*16th July, 1849.* "The accounts from New Zealand are also satisfactory, our Banking operations there are necessarily of a restricted character. No injury of any consequence has re-

sulted to the Bank from the shocks of earthquake experienced at Wellington in October last and the Branches both at Auckland and Wellington are judiciously and profitably conducted."

(Nelson Branch had been closed in 1848) and was re-opened in 1854).

*20th January, 1851.* "In the month of August last the Directors were applied to by the leading persons engaged in the formation of the Canterbury Settlement in New Zealand to facilitate the transmission of the funds of the settlers, and others, and the negotiation of their monetary transactions, and they readily undertook to meet the wishes of so respectable a body by an arrangement mutually beneficial and satisfactory."

(A Branch was opened at Lyttelton in 1850. An Agency was not opened at Christchurch until 1857).

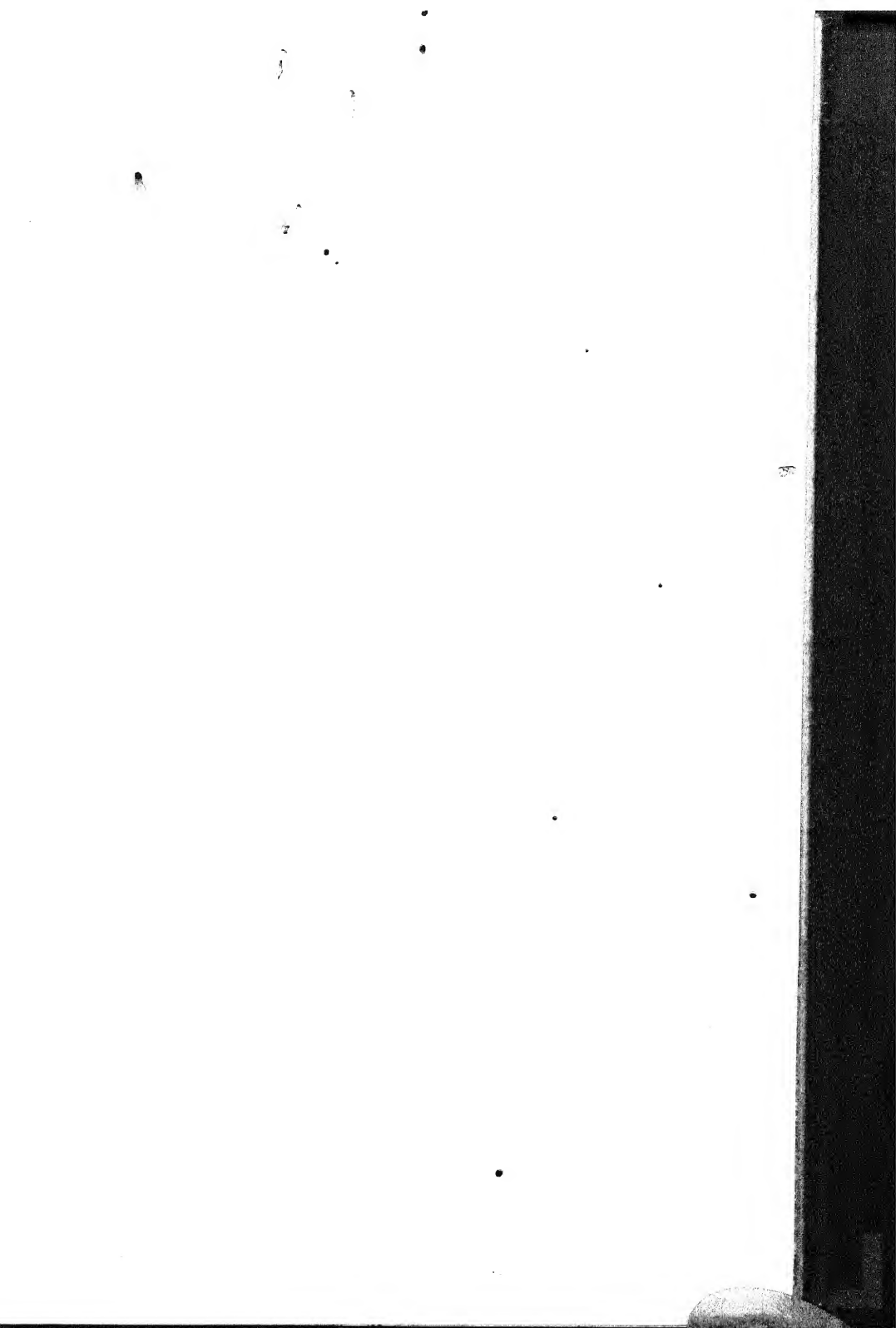
*12th July, 1858.* "It has afforded much pleasure to the Directors to be able to make their service available in the transmission of the funds arising from the Loan of £500,000 raised by the Home Government in aid of the General Government of New Zealand."

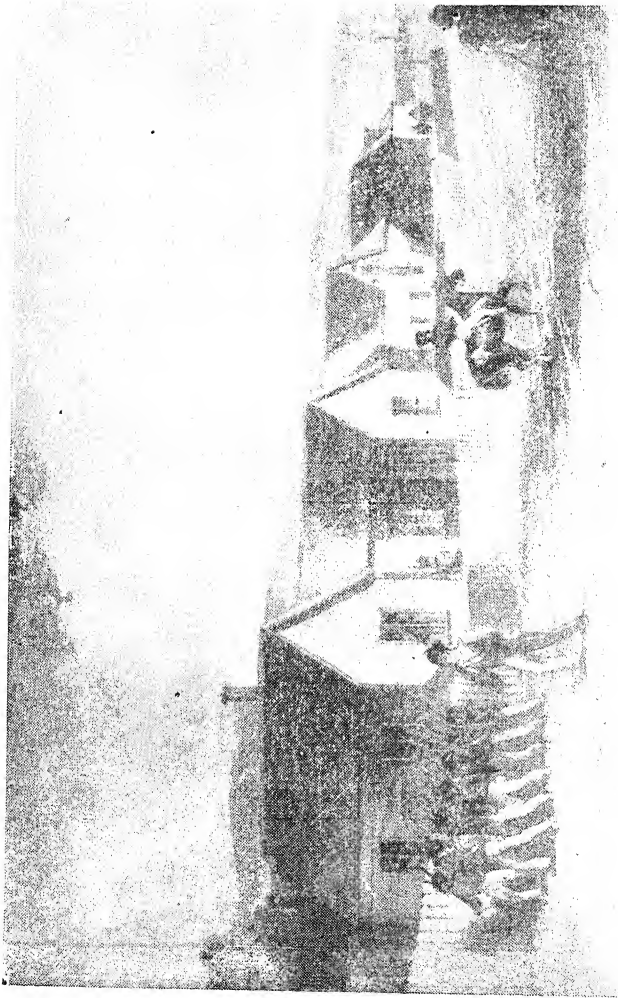
(The loan was for 30 years, bearing interest at 4% and was charged upon the Consolidated Fund of Great Britain and Ireland).

*14th January, 1861.* "The establishments in New Zealand have required increases to meet the natural growth and commerce in that important Colony. The warlike disturbances in its Northern Island, now we may hope terminated, have interrupted to some extent the business of our Branches there, but have been unattended by failures or loss to the Bank."

Auckland Branch was opened in 1848, followed by Lyttelton in 1850, with, in 1857 an Agency at Christchurch, Dunedin in 1857, Napier 1858, Invercargill 1861, Picton 1865, Hokitika and Timaru 1867, Gisborne 1873, Oamaru 1874.

The following figures give a general view of the progress of the Union Bank of Australia from its earliest years up to date:—





Courtesy of The Union Bank of Australia, Ltd  
*The above scene depicts the premises occupied by the Union Bank of Australia in Lombard Street, Wellington, N.Z., in the 'forties of last century. Note the guard of soldiers.*

(To face page 83).

Year.	Note Circulation.	Deposits.	Paid up Capital.	Net Profits.	Dividend.
	£	£	£	£	
1838			143,972	4,712	
1839			268,930	14,651	14%
1841	(1½ yrs.)		542,787	90,614	68/-
1842			743,525	82,099	50/-
1845			820,000	55,781	6%
1850			820,000	88,566	9%
1853	1,085,293	3,303,365	820,000	272,578	33%
1854	660,673	4,089,061	820,000	295,963	36%
1855	527,367	3,093,347	820,000	238,459	30%
1860	559,566	2,972,465	1,000,000	146,466	15%
1865	482,980	2,747,410	1,250,000	222,074	18%
1870	360,536	3,644,343	1,250,000	170,163	13½%
1875	386,278	3,912,497	1,250,000	201,708	15%
1880	348,143	6,767,351	1,500,000	236,560	16%
1885	416,322	10,319,363	1,500,000	256,530	16%
1890	408,651	13,799,044	1,500,000	214,697	14%
1894	405,796	16,930,110	1,500,000	104,426	7%
1895	437,716	16,331,853	1,500,000	81,848	5½%
1900	489,083	15,793,602	1,500,000	140,514	6½%
1905	458,740	16,869,958	1,500,000	209,203	10%
1910	470,997	21,349,025	1,500,000	271,921	14%
1915	274,937	23,594,897	2,000,000	304,999	14%
1920	628,667	31,840,563	2,500,000	458,102	15%
1925	721,031	33,995,484	3,500,000	590,398	15%
1929	579,729	35,644,349	4,000,000	611,932	15%
1930	603,109	34,584,516	4,000,000	525,655	12½%
1931	544,040	33,184,412	4,000,000	283,018	7%
1932	463,479	35,844,650	4,000,000	160,953	4%
1933	495,304	35,215,930	4,000,000	209,559	5%
1934	551,434	38,448,448	4,000,000	203,509	5%

It is interesting to note the wonderful effect on the Bank's figures and dividends, produced by the Australian gold discoveries, and the resulting prosperity. In 1851 the Bank's dividend was 10%, in 1852 11%, in 1853 33%, in 1854 36%, in 1855 30%, in 1856 24%, in 1857 19½%, and in 1858 20%. From then on until 1892 the dividend was never less than 12%, and averaged over 15%.

In 1893 came the great Australian banking crisis which resulted in the following fifteen Banks suspending payment:

29th Jany., 1893..... Federal Bank of Australia Ltd.  
 5th March, 1893 ..... Mercantile Bank of Australia Ltd.  
 5th April, 1893 ..... Commercial Bank of Australia Ltd.  
 13th April, 1893 ..... English, Scottish & Australian Bank Ltd.

21st April 1893	.....	Australian Joint Stock Bank Ltd.
26th April, 1893	.....	London Chartered Bank of Australia.
28th April, 1893	.....	Standard Bank of Australia Ltd.
1st May, 1893	.....	National Bank of Australasia.
6th May, 1893	.....	Colonial Bank of Australasia.
10th May, 1893	.....	Bank of Victoria Ltd.
15th May, 1893	.....	Queensland National Bank Ltd.
15th May, 1893	.....	Bank of North Queensland Ltd.
16th May, 1893	.....	Commercial Banking Co. of Sydney Ltd.
17th May, 1893	.....	Royal Bank of Queensland Ltd.
17th May, 1893	.....	City of Melbourne Bank Ltd.

The Union Bank was able to weather the storm, and made history when it declined to close in Victoria (as did also the Bank of Australasia) after the Government had declared on Monday, the 1st May, 1893, that the first five days of the week were to be Bank holidays.

We quote an extract from *The Argus* (Melbourne) of Tuesday, 2nd May, 1893, which is interesting both from an historical point of view and because it indicates the attitude of the Union Bank of Australia (and Bank of Australasia) towards the somewhat panicky action of the Victorian State Government of that day, and the high sense of duty towards its customers and the public which actuated the Bank under very trying circumstances:—

Extract from "The Argus," Tuesday, May 2nd, 1893.

#### THE FINANCIAL CRISIS.

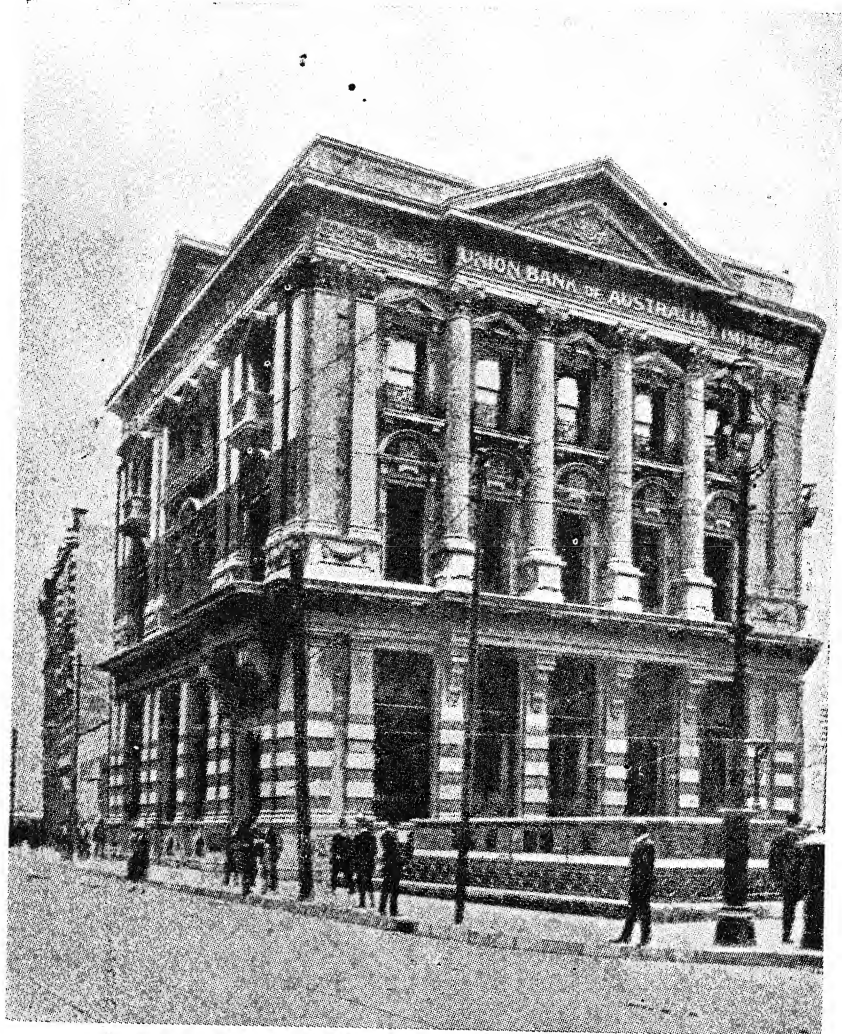
#### EFFECT OF THE GOVERNMENT PROCLAMATION.

#### AN EVENTFUL DAY IN MELBOURNE.

#### UNION BANK AND BANK OF AUSTRALASIA OPEN.

#### *The Scene in Collins Street.*

"The first of May, 1893, will long be remembered as the most eventful day in the commercial history of Victoria. The publication of the news of a compulsory Bank holiday suspending financial operations for the current week in Victoria excited lively feelings of alarm and anxiety throughout the city. Business was practically disregarded, and the whole trading population of the metropolis was



Courtesy of the Union Bank of Australia Ltd.

*The present premises of the Union Bank of Australia, Ltd.,  
Wellington, N.Z.*

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to be seen in the streets. Collins Street was a sea of heads. The excitement was great, and the discussions were earnest wherever two or three citizens met; nor did the agitation abate until after commercial hours.

"A new complication has been added to the financial crisis. When yesterday morning we published the *Government Gazette Extraordinary* announcing that the first five days of the present week were to be regarded as Bank holidays we indicated that the action of the Government was distinctly opposed to the views of some of the leading bankers, and that there was every probability that certain institutions would take steps to meet the convenience of their customers so far as was possible. The truth of this suggestion was proved yesterday by the announcement that the Bank of Australasia and the Union Bank had determined to keep their doors open for the receipt and payment of cheques on current account."

**Extract from Sydney "Daily Telegraph" of 13th October, 1910.**

"During and after the crisis, which the Bank weathered satisfactorily, there was a reduction of about £3,000,000 in the deposits. That was the usual experience, as the average Australian had lost money heavily and his banking account suffered."

Whilst the Bank was one of the few to keep open during the crisis, it did not escape entirely scathless, for at 27th July, 1896, the following appears in the Directors' Report to the Annual Meeting:—

"In consequence of the great depreciation in the values of all classes of securities in Australia following upon the Banking Crisis of 1893 and of the great difficulty in arriving at those values with any degree of accuracy, and feeling that this depreciation could not any longer for present purposes, be regarded as purely temporary, the Directors have, in consultation with the Bank's General Manager, considered the subject in all its bearings; and the ultimate result of the most careful and exhaustive scrutiny of the whole matter extending over a period of some months is that the Directors have decided to ask the permission of the Shareholders to withdraw from the Bank's Reserve Fund to a Contingent Account a sum of £250,000 as a provision for contingencies. This sum is not asked for in

connection with realised losses, nor is it asked for in consequence of any sudden or unexpected unfavourable development, but as the result of what can only be called a re-valuation of the whole of the Bank's business down to what the Directors and the General Manager believe to be the values of the present day."

It is interesting to record that this Contingency Account was never drawn upon and was later returned to the Reserve Fund.

The Bank's dividend came down to 10% in 1893, 7% in 1894, 5½% in 1895, 5% in 1896-7-8, 5½% in 1899, and 6½% in 1900. Thereafter there was a quick recovery to 14% in 1907, at which figure it remained for 14 years, followed by 15% for nine years until 1929. The average rate of dividend for the first 90 years of the Bank's existence was £13/9/1¢—a very fine record!

The Bank's New Zealand figures according to the first Banking returns published in the *New Zealand Gazette* of 17th November, 1841, were:—

Notes in Circulation .....	£5,825
Deposits .....	£9,381
Coin, Gold and Silver .....	£3,214
Debts due to Bank .....	£14,928

No further returns are available until 1859, when the figures were:—

Notes in Circulation .....	£89,136
Deposits .....	£512,062
Gold and Silver .....	£192,343
Debts due to Bank .....	£610,960

The arrival of the Bank of New South Wales in 1861, the formation of the Bank of New Zealand in the same year, and the further arrival of the Bank of Australasia in 1864, necessarily curtailed the expansion which the Bank might otherwise have expected in New Zealand, but the gold discoveries of these years and the boom resulting therefrom had their effect, and in 1865 the figures were:—

Notes in Circulation	.....	£150,203
Deposits	.....	£734,453
Debts due to Bank and Bills discounted		£990,118

It is interesting to compare the New Zealand figures at 10-year intervals thereafter:—

Notes in Circulation—

1875.	1885.	1895.	1905.
£	£	£	£
130,888	115,135	112,309	153,999
1915.	1925.	1930.	1934.
£	£	£	£
231,120	659,345	532,582	516,154

Deposits—

1875.	1885.	1895.	1905.
£	£	£	£
975,683	1,761,267	2,754,254	2,604,798
1915.	1925.	1930.	1934.
£	£	£	£
3,741,607	6,392,791	6,103,583	7,119,405

Debts due to Bank and Bills Discounted—

1875.	1885.	1895.	1905.
£	£	£	£
1,355,357	1,622,408	1,377,256	1,981,411
1915.	1925.	1930.	1934.
£	£	£	£
4,003,203	5,166,414	6,474,664	5,038,264

It is evident from these figures that the Union Bank has done its full share in assisting by its lending policy towards the development of New Zealand. It has often been said that the Australian Banks are only in New Zealand for deposits to lend out again in Australia. The above figures show that generally speaking the reverse has been the case. It is interesting, however, to note the preponderance of deposits in 1895 compared with advances, and it was not until well into the new century that advances again approached the amount of deposits. There is no doubt that for a period, apart from the conservative policy adopted by the Union Bank towards overdrafts in New Zealand, depositors felt more confidence in the

old established Australian Banks than they did in the purely New Zealand institutions.

The history of this Bank would not be complete without some brief reference to the men responsible for its progress. The Bank's first Colonial Inspector was John Cunningham McLaren, who was responsible for laying the foundations of the Bank so truly during its earliest years. He continued in office until 1850, and was succeeded by Wm. Fletcher, who retired in 1854—and Alexr. McDonald (in 1841 Manager at Nelson), who resigned in 1856. Two Inspectors were then appointed, James Blackwood, for Victoria, South Australia, and Tasmania, and John F. McMullen for New South Wales and New Zealand, but in 1860 Mr. McMullen was appointed Inspector and General Manager, and John C. Raymond, Inspector for New Zealand. Mr. McMullen continued as General Manager for 27 years, until 1887, and was a tower of strength to his institution and probably its most noted General Manager. He was followed by David Finlayson, 1887-1899; Wm. Lees, 1899-1902; Samuel Hallamore, 1902 to 1912; C. W. F. T. Russel, 1912 to 1916; A. H. Chambers, 1916 to 1928, and W. A. Leitch, 1928 to date.

In 1872 Mr. Joseph Palmer, of Christchurch, was appointed Chief Officer for New Zealand, and Christchurch became Head Office for New Zealand. In 1891 Mr. G. E. Tolhurst was announced as Resident Inspector for New Zealand, vice Mr. Palmer, retired, and the Head Office was removed to Wellington. Mr. Tolhurst controlled the Union Bank affairs in New Zealand for 20 years, and was succeeded by Mr. R. A. Holmes in 1911. Mr. C. G. Ogilvie followed in 1919, Mr. W. A. Leitch (now General Manager) in 1923, Mr. W. A. Kiely in 1927, and Mr. T. P. Fotheringham in 1933.

The Bank has also been fortunate in obtaining the services of many able and distinguished men on its London Directorate, amongst whom might be singled out Mr. Arthur Flower, who was Chairman of the London Board from 1896 to 1911.

The record of the Union Bank is one to be proud of, and though the Bank, in company with other Australasian Banks, is at the present time passing through times of trouble owing to world-wide economic conditions, and the shareholders' dividends have receded to figures reminiscent of those of the 'nineties, there is little doubt that the Bank will, when the present depression passes, again prove a highly satisfactory investment for its shareholders. Its sound and conservative banking policy in past years has enabled it to withstand the buffets of the last year or two with equanimity, and will continue to enable it so to do to an even greater extent, if it should unfortunately prove necessary.

#### **(4) The Bank of New South Wales.**

In a work which is intended to cover briefly the banking history of New Zealand, the record of the Bank of New South Wales, prior to the opening of its first branch in New Zealand in 1861, hardly concerns us. As it is desirable however, that something should be known of the early history of this, the oldest of the banking institutions of Australasia, which has played an important part in the progress of this Dominion, we offer no apologies for extending our enquiries for a moment beyond the limits of our original intentions.

The penal settlement of Botany Bay, near Sydney, New South Wales, appears to have been established in 1788, but from that date until 1817, when its population was about 5,000, the settlement was without any banking facilities and the people suffered much inconvenience owing to want of any regular form of currency. Spirituous liquors (chiefly rum) were the chief form of readily acceptable currency. "On the occasion of the performance of the first play, on the 16th January, 1796, it was publicly announced that the price of admission was one shilling, paid in meal or rum, taken at the door!"

To meet their needs settlers issued promissory notes for 5/- payable on demand in copper, and the Government gave store receipts for wheat, and these both passed as currency.

Notes payable on demand were given for any service rendered to the Government, and these Government issues were known as "sterling currency." Notes of private individuals were called "colonial currency."

The actual coinage circulating was of a somewhat mixed character, and in 1800 Governor Hunter proclaimed the value of the various pieces as under:—

	£	s.	d.
A guinea .....	1	2	0
a Johannes .....	4	0	0
a half-Johannes .....	2	0	0
a ducat .....		9	6
a gold Mohur .....	1	17	6
a pagoda .....		8	0
a Spanish dollar .....		5	0
a rupee .....		2	6
a shilling .....		1	1
a copper coin of 1 ounce .....			2
a copper coin of $\frac{1}{2}$ ounce .....			1
a copper coin of $\frac{1}{4}$ ounce .....			0 $\frac{1}{2}$

Copper was legal tender for £5, but "rum paid for everything!"

The confusion in currency matters continued until 1816, when by direction of the Governor, a meeting was held on 22nd November of that year "to take into consideration the present state of the colonial currency and what would be the consequences of an immediate sterling circulation. The outcome of the meeting was a decision to form a "public Colonial Bank" with a capital of £20,000 in shares of £100 each. At a subsequent meeting of the subscribers on 7th February, 1817, rules and regulations were submitted and approved, and seven Directors were appointed, and on 22nd February, 1817, the following advertisement appeared in the *Sydney Gazette*:—

"BANK OF NEW SOUTH WALES. WANTED, for this establishment, a suitable strong, well-built house, situate in or near George Street. Also two persons of respectable character, who can give good security for their fidelity to fill the situation of Cashier and principal Accountant. It being intended to open the Bank on the 1st March next ensuing, no time is to be lost in making tenders of houses and services for the above purposes. Applications to be made to the undersigned, the President of the Board of Directors,

J. T. CAMPBELL."

The Bank opened for the despatch of business at Mrs. Mary Reiby's house in Macquarie Place on 8th April, 1817.

On 15th July, 1817, the Bank procured a "strong secure chest" for the deposit of its cash and valuables, and the President deposited therein the assets:—

58 Sets of Bills on the Treasury	.....	.....	£6,267 17 11
15 Bills of Exchange discounted	.....	.....	1,315 13 0
16 Store Receipts	.....	.....	367 12 8
1 Packet Cancelled Notes	.....	.....	1 15 6
3008 Dollars	.....	.....	752 0 0
725 Dumps (the centre punched out of a Holey Dollar)	.....	.....	45 6 3
6 Bank of England Tokens	.....	.....	18 0
3 English Shillings	.....	.....	3 0
1 Quarter Dollar	.....	.....	1 3
13 Coppers	.....	.....	1 1
			£8,751 8 8

On 19th May, 1818 the following were ordered from London:—

- 1 Brass Barrelled Blunderbuss with Spring Bayonet.
- 1 Case Horse Pistols, also Brass Barrels with Spring Bayonets.
- 1 Bullet Mould and some Flints.
- Books and Stationery.
- Forms for Notes 2/6, 5/-, 10/-, 20/-, £5, £10, £20 on paper similar to Bank of England Note Paper with the watermark "Bank of New South Wales" in the centre.

Although the authorised capital was £20,000, the amount subscribed was only £12,600, and the first ledger shows that operations were commenced with a Paid-up Capital of £3,625 expressed in dollars.



*First Balance-sheet at 31st December, 1817.*

<i>Liabilities.</i>			
Notes in Circulation .....	£5,635	8	0
Personal Balances .....	1,859	4	8
			<hr/> 7,494 12 8
Bank Subscriptions Received—			
1st Instalment .....	1,500	0	0
2nd do. ....	1,350	0	0
3rd do. ....	775	0	0
			<hr/> 3,625 0 0
Discount .....	250	13	0
Premiums .....	30	14	5
			<hr/> 281 7 5
			<hr/> <hr/> £11,401 0 1
<i>Assets.</i>			
Bills in Treasury, Store Receipts and Specie on Hand	£3,613	2	10
Bills of Exchange falling due .....	5,693	5	1
Mortgages .....	1,381	0	0
Office Goods and Furniture-cost .....	340	10	4
Bank Expenditure for Salaries, Wages, Stationery, etc.	373	1	10
			<hr/> <hr/> £11,401 0 1

Compared correct 13th January, 1818.

R. Campbell, Junr., Accountant.

Certified correct,

E. S. Hall, Cashier.

J. T. Campbell (President).

W. D. Wentworth, William Redfern.

Thomas Wylde, R. Jenkins.

The chief business of the Bank in these early days appears to have been the discounting of bills of amounts from £20 to £500 for terms from 14 days to 3 months, and by 1819 the amount of such bills was £107,236 and "complaints were not infrequent regarding the exclusive nature of the Bank's operations." At the end of 1818, a dividend of 12% was declared, and 21% at the end of 1819!

During 1822 the Governor gave legal sanction for the Bank to charge interest on overdrafts at the rate of 10% per annum.

As the result of a meeting of Bank proprietors in May, 1822, it was decided no longer to receive Spanish dollars

in payment until their specific value was officially determined. This prohibition endured until the 1st of July following, when the rate of exchange was fixed by the Directors at 4s. 2d. each; or five dollars to the pound sterling.

In 1824 all the Bank's notes were called in and fresh ones issued in dollars, but these were replaced again in 1826 by another issue of sterling notes. The Balance-sheet at 31st December, 1825 was the last in which the dollar was shown as the unit of account and is interesting on that account:—

*Balance-sheet at 31st December, 1825.*

<i>Liabilities.</i>						<i>Dollars.</i>
Capital paid up .....	.....	.....	.....	.....	.....	43,200.00
Notes in Circulation .....	.....	.....	.....	.....	.....	115,940.00
Deposits .....	.....	.....	.....	.....	.....	297,158.98
Dividends unclaimed .....	.....	.....	.....	.....	.....	486.00
Profit and Loss—30th June to 31st Dec., 1825 .....	.....	.....	.....	.....	.....	11,395.21
						<hr/> <hr/> \$468,180.19
<i>Assets.</i>						<i>Dollars.</i>
Dollars in chest .....	.....	.....	.....	.....	.....	127,479.50
Government Store Receipts .....	.....	.....	.....	.....	.....	27,691.24
Bills .....	.....	.....	.....	.....	.....	291,208.28
Mortgages .....	.....	.....	.....	.....	.....	20,295.67
Furniture .....	.....	.....	.....	.....	.....	1,505.50
						<hr/> <hr/> \$468,180.19

The profit for this half-year was approximately £2,798 and the dividend declared was £9/5/- sterling, or 37 Spanish dollars, per share.

The rate of discount was, early in 1826, reduced from 10% to 8%.

The Bank's success, and exclusive policy, naturally resulted in the promotion of a rival institution, and in 1826 the Bank of Australia with a capital of £120,000 came into existence. Still a third Bank was promoted, the Sydney Commercial Bank, but the Bank of New South Wales paid-up capital was increased, the proprietors authorised to split

their £100 shares into tenths, and the shares were thrown open to the public in order to increase the number of shareholders. The effect of this move was to stifle the formation of the third Bank whose promoters appear to have been some ex-directors and proprietors of the Bank of New South Wales, whose chief opposition appears to have been directed at that Bank's policy in the matter of its share issue.

Owing to the dearth of specie in the colony, and rumours as to the Bank's stability due chiefly to the dishonour of a cheque for 800 dollars drawn by a customer who had barely one-fourth of that amount to his credit, a run on the Bank occurred in May, 1826, and 90,000 dollars were withdrawn in a week. Governor Darling was waited on and Government assistance solicited. This was offered on certain conditions which were unacceptable, though eventually accepted as a matter of policy. The assistance was not actually required, as public confidence was inspired by the Governor's action, and the Bank's business rapidly resumed its usual course, enabling a substantial dividend of 32% per annum to be paid to the proprietors as at 30th June, 1826.

In February, 1827, a resolution to accept fixed deposits and pay 5% per annum thereon, was overwhelmingly defeated, which indicates not only that banking ideas had not developed very far at this stage of the Bank's career, but also that there was no very attractive outlet for the investment of the Bank's funds up to this point in the new colony's development.

On October, 1827, it was decided that, as a flaw existed in the Bank's original charter, the Bank should be changed into a Joint Stock Company with a capital of £150,000 in 1500 shares of £100 each, and a deed of settlement was agreed to which provided that the Bank should be carried on for seven years.

The Colony of New South Wales was, at this time, passing through a very difficult period, and the Bank was "again in rather low water, which it may be added was

the last occasion in the history of the institution when a crisis seriously threatened its financial stability."

An appeal to the Government at the end of 1828, due to the need for immediate financial assistance resulted in a promise of £15,000, but on more drastic terms than those offered on a previous occasion—conditions which would probably have meant the dissolution of the Bank within twelve months. There appears to have been a strong bias on the part of the Governor's advisers in favour of the new Bank—the Bank of Australia, in which some members of the Government apparently held an interest, two of them being Directors thereof.

The appointment of a Mr. John Black as Secretary and Cashier of the Bank at this difficult time, is stated to have "saved the Bank." He "very soon infused new life into the institution. . . . . He set his wits to work, and by indefatigable efforts succeeded ere long in getting in enough money to place the Bank on a footing of comparative independence . . . . Mr. Black's energetic and judicious management led to his being able to repay the Government and free the Bank of so dangerous a liability. Its threatened dissolution was thus averted, although it is said that after the Government claims had been met the cash in the Bank's Treasury-chest amounted to only £29!"

In 1834 the Bank's paid-up capital was increased to £40,000. This year also saw the birth of the Commercial Banking Co. of Sydney, and the following year the Bank of Australasia came into existence. In 1836 the necessity for further capital to meet the competition of these new rivals, resulted in an increase in the paid-up capital to £100,000.

In 1836 the assets of the Bank amounted to £248,850—and in 1840 they had increased to £487,000.

The authorised capital was increased by £150,000 in 1838, but the years following 1842 were years of great depression, and in 1844 the capital was reduced by £68,000 due to bad debts, and about £34,000 was returned to the proprietors, owing apparently to there being no satisfactory outlet for it in the way of safe investment in the colony.

By 1847 the paid-up capital was £104,272/10/- and a Reserve Fund of £33,086 had been accumulated.

The Balance-sheet figures at 31st December, 1849, were:—

<i>Liabilities.</i>						
Capital paid up .....	.....	.....	.....	.....	£125,284	0 0
Notes in Circulation .....	.....	.....	.....	.....	33,711	0 0
Deposits .....	.....	.....	.....	.....	215,335	7 3
Surplus Fund .....	.....	.....	.....	.....	10,919	16 6
Net Profit .....	.....	.....	.....	.....	9,323	1 9
					£394,573	5 6
<hr/>						
<i>Assets.</i>						
Coin and Bullion .....	.....	.....	.....	.....	£143,233	13 8
Landed Property and Premises .....	.....	.....	.....	.....	15,255	13 0
Bills discounted and other Debts and Securities .....	.....	.....	.....	.....	236,083	18 10
					£394,573	5 6

In 1850 negotiations for a fresh Act of Incorporation were entered into with the Government. A new Deed of Settlement was approved by the proprietors, and the copartnery hitherto existing ceased on 22nd August, 1850. The new Company was formed on the following day under the new Deed of Settlement, dated 23rd August, and was incorporated by Act of Council on 6th September, 1850.

From the opening of the Bank on 8th April, 1817, to 22nd August, 1850, the Bank had paid in dividends and bonuses £340,000 or about three times the paid-up capital. Sixty-one dividends had been declared, one at £51/7/9 p.a.; one at £25/-/-; one at £41/13/4; two at £33/6/8; nine from 20% to 25%; sixteen from 15% to 20%; twenty-five from 10% to 15%; six under 10%.

The business of the newly-constituted Company showed marked progress from this date, materially affected, of course by the gold discoveries in Australia during the following years. By 1854 the figures were:—

<i>Deposits.</i>	<i>Paid-up Capital.</i>	<i>Net Profits.</i>	<i>Total Reserve.</i>
£2,112,604	£473,472	£160,819	£80,000

At the end of this year Mr. J. H. Black retired, after occupying the position of Secretary and General Manager for 26 years.

By 1855 the paid-up capital was £500,000 and the Bank's progress through the years to follow was of a steadily expanding nature. In 1861 the Bank extended its business to New Zealand, and opened at Auckland on 11th June, Christchurch on 19th July, Dunedin on 8th August, and Wellington on 1st September of that year.

The Oriental Bank Corporation, with Australian headquarters in Melbourne, had opened branches in New Zealand in 1857, and in 1860 Falconer Larkworthy arrived in Auckland on behalf of the Corporation, which was considering discontinuing its business in New Zealand, as its deposits were insufficient and "too much loan money was required." He was instructed not to extend the business, and in May, 1861, he received word to close it up. D. L. Murdoch was sent over by the Bank of New South Wales to take over the Oriental Bank's premises and such business of the Bank as was considered suitable by the Bank of New South Wales.

It is interesting to note at this point that one Thomas Russell was a customer of the Oriental Bank and apparently even at that early stage of his somewhat hectic connection with New Zealand's banking history his account was not considered satisfactory, and it was Murdoch's hesitation to take over Russell's account which caused Russell to suggest the formation of the Bank of New Zealand (further details in this connection will be found under the head of "Bank of New Zealand").

D. L. Murdoch was subsequently appointed Inspector of the Bank of New Zealand.

For most of the above information we are indebted to an interesting publication issued by the Bank of New South Wales covering a survey of the Bank's history from 1817 to 1907.

The Bank's subsequent progress so far as New Zealand is concerned is chiefly obtained from the quarterly average

statements supplied to the Government under our banking legislation and published in the *New Zealand Government Gazette*. From this source we learn that the average figures for New Zealand for quarter ending 30th September, 1861, the first published on account of the Bank of New South Wales were:—

	£
Notes	13,767
Deposits	131,942
Debts due to Bank and Bills discounted	98,895

and at 31st December, 1861, these figures owing, no doubt, to the absorption of the Oriental Bank had increased to

	£
Notes	65,204
Deposits	256,539
Debts due to Bank and Bills discounted	233,258

The Bank's advent to New Zealand coincided with the gold discoveries in Otago and the consequent impetus given to the progress of the Colony by those discoveries, and so the figures show steady progress. Five years after, at 31st December, 1866, the figures were:—

	£
Notes	170,347
Deposits	646,182
Advances and Bills discounted	783,487

But from this point the figures, except advances, remained almost stationary for some years, and by 1875 they were:—

	£
Notes	102,603
Deposits	590,545
Advances and Bills discounted	1,055,244

indicating the constant demand for accommodation which was a noticeable feature of banking in New Zealand during this period. At 31st December, 1875, the banking returns for the six banks doing business in New Zealand show a total of deposits, including Government deposits, of £5,534,838, whilst advances and bills discounted amounted to £8,213,188. ~

The demand for capital for development purposes was very persistent, and the banks met those demands, and so no doubt, conjointly, with the spending policy of the then Government of New Zealand, assisted towards the creation of the boom in land values which was one of the chief contributory causes of the later troubles of the 'eighties and 'nineties.

Taking the New Zealand figures of the Bank of New South Wales for the next twenty years at five-year periods, we note the further progress of this institution in New Zealand. We show the bills discounted separately from the advances on overdraft:—

	1880.	1885.	1890.	1895.
	£	£	£	£
Note issue .....	80,087	85,763	100,500	102,192
Deposits .....	664,408	939,939	1,830,291	2,058,961
Bills discounted .....	408,839	270,761	258,704	210,644
Other debts due to Bank	570,328	1,304,873	1,545,611	1,589,953

The Bank of New South Wales was one of the few Australian Banks that did not have to close their doors or reconstruct during the Australian financial crisis of 1893. It will perhaps be interesting to quote the Balance-sheet figures of the Bank at 31st March, 1893.

Balance-sheet of the Bank of New South Wales for year ending 31st March, 1893:—

*Liabilities.*

Paid-up Capital .....	£1,250,000	0	0
Reserve Fund .....	1,000,000	0	0
Notes in Circulation .....	660,325	0	0
Bills Payable, etc. ....	1,448,407	2	4
Deposits and other Liabilities .....	20,418,942	10	10
Profit and Loss .....	137,939	9	4

£24,915,614 2 6

*Assets.*

Coin and Cash Balance .....	£3,403,769	14	1
Bullion .....	42,193	11	2
Government Securities .....	560,972	11	6
Notes of Other Banks .....	10,116	0	0



Bank Premises .....	589,668	9	9
Bills receivable, Bills discounted and other debts due to Bank .....	20,308,492	17	11
Insurance Account .....	400	18	1
	<u>£24,915,614</u>	<u>2</u>	<u>6</u>

In 1900, 1910, and 1920, respectively, the Bank's figures in New Zealand moved ahead as follows:—

	1900. £	1910. £	1920. £
Note issue .....	148,125	173,520	619,653
Deposits .....	2,436,728	3,201,850	6,723,900
Bills discounted .....	205,550	189,938	65,040
Debts due to Bank .....	1,877,781	2,260,913	3,552,666

The figures for 1920 show the abnormal position which existed immediately before the slump of 1921, deposits being much in excess of advances. The position altered by March, 1921, when advances increased to £5,726,076.

By 1925 the figures were:—

Note Issue	£485,098	Bills discounted	£145,936
Deposits	£6,233,567	Debts due to Bank	£5,055,524

In March, 1929, immediately preceding the period of the world wide depression which commenced in the latter half of 1929 and is at the time of writing still with us, the figures were:—

Note Issue	£530,820	Bills discounted	£130,690
Deposits	£6,689,459	Debts due to Bank	£5,788,360

and at 31st March, 1932, were:—

Note Issue	£438,192	Bills discounted	£91,304
Deposits	£5,722,332	Debts due to Bank	£5,903,779

The growth of the Bank generally in the last two decades has been remarkable as a study of the following figures will show:—

	Note Circulation.	Deposits.	Advances.	Paid-up Capital.	Year's Net Profits.	Reserve Fund.
	£	£	£	£	£	£
1912 .....	289,595	34,614,798	26,842,965	3,000,000	429,137	2,085,000
1917 .....	499,203	40,579,001	25,608,533	3,904,860	553,652	2,800,000
1922 .....	565,048	50,559,270	36,852,154	5,864,360	698,122	3,600,000
1927 .....	673,454	61,554,635	53,408,838	7,423,440	1,226,247	5,309,240
1932 .....	564,772	83,943,595	64,547,029	8,780,000	462,966	6,150,000
1933 .....	601,793	86,317,691	65,232,079	8,780,000	439,616	6,150,000

In 1927 the Bank of New South Wales acquired the Western Australian Bank, and in 1931 it absorbed the Australian Bank of Commerce, so that this Bank is now the largest of the Australasian Banks, its total assets being over £108,000,000.

Any historical review of the Bank of New South Wales would not be complete unless reference were made to the various able men who have occupied the position of General Manager. As is the case with the National Bank of New Zealand Ltd. the length of term of office of most of the Bank's Chief Officers has been of great benefit to the Bank. Reference has already been made to Mr. John Black, the first General Manager, who was appointed in 1829 and held office until 1854. Mr. R. Woodhouse succeeded him in 1854 and remained in office until 1864. During this period (in 1862) the Bank's provident fund providing for the superannuation of its officers had its commencement. One of the Bank's most able General Managers then took office, at the extraordinarily early age of 29—Mr. Shepherd Smith. "A born financier, he would have made his mark as a banker even in the great banking centre, London. His devotion to the Bank's interests was unparalleled." His death in 1886, at the early age of 51, after 22 years in office, was deeply regretted. Following Mr. Shepherd Smith, Mr. George Miller, the Melbourne Manager of the Bank, took office, and was succeeded in 1894 by Mr. John Russell French, who retained office until 1921, a period of 27 years. His able administration of the Bank's affairs during this long period and especially during the years following the Australian financial crisis of 1893, and again during the very

onerous years of the Great War and the years immediately following, did much to establish the Bank in the position of the leading banking institution in Australasia, which it occupies to-day. In 1917, which was the Bank's centenary year, His Majesty the King conferred on Mr. French the well-deserved honour of Knighthood. His successor was the Bank's Chief Inspector, Mr. Oscar Lines, who in 1929 was succeeded by the present General Manager, Mr. A. C. Davidson.

The Bank has been ably served in New Zealand by its various Inspectors. Commencing with Mr. D. L. Murdoch in 1861, the following occupied the position of Chief Officer for New Zealand:—

Mr. J. O. Gilchrist	until 1870
Mr. J. R. Hill	„ 1882
Mr. W. G. Rhind	„ 1898
Mr. E. J. Finch	„ 1911
Mr. B. M. Molineaux	„ 1921
Mr. H. W. Lever	„ 1927
Mr. J. T. Grose	„ 1928
Mr. R. C. Addison	since 1928

The present General Manager, Mr. A. C. Davidson, was for some years in New Zealand as Manager at Gisborne, and as Sub-Inspector at Wellington. During the financial troubles of Australia since 1929, he has given strong support to the Premiers' plan of reconstruction. He appears to have taken an independent course in banking matters, and his Bank has been a leading influence in Australia in the direction of increasing the exchange rates between Australia and London. Also in New Zealand the influence of the Bank of New South Wales played a material part in bringing about the increase in the London rate to 25% in January, 1933. Only in years to come can the full effect of Mr. Davidson's influence on banking policy in Australia and New Zealand be seen in its true perspective, and its real value correctly assessed.

**(5) The Bank of Australasia.**

“ The first Chartered Bank operating in the Colonies under direction from London was the Bank of Australasia, at present one of the most successful and most respected overseas Banks in London.” (“ The Imperial Banks,” Chapter III, page 49.—A. S. J. Baster, B.Sc., London, 1929).

The Prospectus of the Bank of Australasia is dated “ 18 Aldermanbury—March, 1834.”

“ Banks or other Companies for that matter were not so readily started in those days, and the Royal Charter of Incorporation for the Bank of Australasia was obtained only after a weary period of negotiation.” (“ The Banking Institutions of Australasia.”—R. L. Nash, Melbourne, 1889).

The original application was to establish a Bank to be called “ ‘ The Royal Bank of Australia and South Africa,’ but His Majesty’s Treasury was happily inexorable and ‘ The Bank of Australasia ’ was the title finally agreed upon.” (*Ibid.*)

Capital was fixed at £200,000 in 5,000 shares at £40 each, with power to the Directors to increase the amount from time to time. Additional shares were first to be offered to existing shareholders. The management was vested in a London Board of Directors who had power to appoint Local Directors in the Colonies.

It was not until December, 1835, that the Bank’s first Branch was established in Sydney, and the Bank absorbed the “ Cornwall Bank ” at Launceston, Tasmania. Branches at Hobart and Launceston followed on 1st January, 1836, Melbourne on 28th August, 1838, and Adelaide on 14th January, 1839.

It is interesting to note that in August, 1838, Melbourne was a small isolated village lacking communication with other ports except by sea, and that the officer deputed to open the Melbourne Branch sailed from Sydney in a revenue cutter provided by the Government and did not arrive in Melbourne until six weeks later after “ a long and tempestuous voyage.”

Another writer on early Victorian history, in referring to this Bank, mentions that "The original branch was established at the east corner of Collins Street and Bank Place in a one-storey brick cottage which was guarded by a soldier and a pair of huge mastiffs."

Whilst economic conditions in Australia were fairly prosperous during the first few years of the Bank's existence, early in the 'forties, there was a reaction and a difficult period set in for all financial and trading concerns. We find the following remarks in the Directors' Report of June, 1844:—

"It is with feelings of disappointment and regret that the Directors have to inform the proprietors that the severity of the pressure has augmented to an unparalleled degree, shaking the credit and involving the ruin of large classes of the community."

But the Bank of Australasia emerged unshaken from this period of distress due to its policy of accumulating reserves during the more prosperous years.

The following Balance-sheet figures extracted at five-yearly periods will give a general view of the Bank's financial history:—

<i>Date.</i>	<i>Note Circulation.</i>	<i>Deposits.</i>	<i>Paid up Capital.</i>	<i>Net Profits.</i>	<i>Rate of Divi- dend.</i>
	£	£	£	£	%
1836			200,000	14,728	4
1840			400,000	63,910	12
1845	84,597	525,170	900,000	31,083	4½

Dividend in 1846 was 1½%, and no dividend was paid in 1847 and 1848, and 1½% in 1849, this being due to assistance to the extent of £150,000 having been given to the "Bank of Australia," which debt was only settled by appeal to Privy Council in 1848, the point at issue being the right of the Directors of the "Bank of Australia" to borrow.

1850	119,650	596,424	900,000	64,422	3
1855	767,479	2,674,881	900,000	196,421	20
1860	461,821	2,301,212	900,000	104,914	13½
1865	352,980	2,618,163	1,200,000	168,185	14
1870	295,435	2,953,179	1,200,000	95,823	10

<i>Date.</i>	<i>Note Circulation.</i>	<i>Deposits.</i>	<i>Paid up Capital.</i>	<i>Net Profits.</i>	<i>Rate of Divi- dend.</i>
	£	£	£	£	%
1875	311,991	3,614,340	1,200,000	156,035	12½
1880	324,701	5,803,895	1,200,000	149,794	12½
1885	490,766	10,721,643	1,600,000	274,888	15
1890	435,350	13,657,509	1,600,000	224,495	14
1895	417,651	13,079,364	1,600,000	82,013	5
1900	482,985	13,650,832	1,600,000	299,888	9
1905	450,854	16,329,565	1,600,000	273,604	12
1910	564,886	16,896,475	1,600,000	392,253	14
1915	263,038	20,578,325	2,000,000	410,520	17
1920	571,205	27,018,082	3,500,000	573,051	13
1925	437,626	28,708,674	4,000,000	632,554	13
1930	401,137	34,232,584	4,500,000	615,084	13
1931	333,079	37,678,573	4,500,000	494,563	9
1932	334,031	38,120,629	4,500,000	254,969	7
1933	353,520	37,833,349	4,500,000	258,507	7½

The gold discoveries in Australia in 1851 and the following years brought remarkable prosperity to Australia and, of course, the Bank of Australasia fully shared in this prosperity.

Its progress was steady, with minor periods of difficulty, until the troubles of the 'nineties, and it is of importance to banking students to note that the Bank of Australasia was one of the very few Australian Banks to survive the crisis of the early months of 1893, when no fewer than fifteen Banks were compelled to close their doors.

The Bank of Australasia did not extend its business to New Zealand until 1864, and branches were opened at Auckland, Christchurch and Dunedin, and at Wellington in 1866.

In spite of the fact that there were already four Banks operating in New Zealand, the Union Bank of Australia, the Bank of New Zealand, the Bank of New South Wales and the Bank of Otago, the new arrival was soon established on a firm footing, and by 1870 had a New Zealand note issue of over £45,000, deposits £225,000 and advances £526,000, the last-mentioned figures indicating that the Bank was doing its share in providing funds for the development of a young country.

It is a noticeable feature that, according to the quarterly banking returns, this Bank's advances in New Zealand in the

'seventies and 'eighties much exceeded its New Zealand deposits, as the following figures show:—

		<i>Deposits.</i>	<i>Advances.</i>
1875	.....	£197,729'	£625,181
1880	.....	415,310	861,482
1885	.....	596,348	1,472,927
1890	.....	1,059,344	1,159,696

By 1890 it is seen the position had altered, and in 1891 the Deposits exceeded the Advances, and for a decade the Bank's advance policy in New Zealand appears to have been a conservative one. It was not until early in the new century that the Bank appears to have again considered New Zealand a satisfactory outlet for its Australian funds, and by 1905 the figures were:—

Deposits ..... £1,670,693.      Advances ..... £2,674,717

This policy continued until the War period, when gradually the war prosperity of the primary producers and of many business concerns and the high wages paid generally, resulted in a great expansion of deposits and a lessened relative demand for accommodation. This development reached its apex in 1920, when this Bank's New Zealand deposits were £4,852,851, and Advances £3,955,911.

But a remarkable reversal followed in 1921, when Deposits were £4,454,135 and Advances £6,029,518, due chiefly to the abnormal influx of imports in this period. It was not until 1925 that the relative figures again became normal.

At 1929—Deposits were £5,158,279.      Advances £4,737,439.

At 1932—Deposits were £4,564,346.      Advances £4,826,007.

It is very evident from a perusal of the above figures pertaining to this Bank's New Zealand business that it has played its part towards meeting the demands of the people for accommodation in the days when, owing to the pressure of economic conditions, those demands were heavy.

As regards the official heads of the Bank of Australasia, in Australia and New Zealand, the first Inspector was Mr. P. G. Kinnear, who was followed by Mr. G. R. Griffiths in

1839. In 1842 the title of Superintendent was adopted for the Chief Executive Officer for Australasia and Mr. W. H. Hart was appointed. Then followed

J. J. Falconer	.....	1848-1868
D. C. McArthur	.....	1868-1876
E. S. Parkes	.....	1876-1887
John Sawers	.....	1887-1905
Ames Hellicar	.....	1905-1907
C. R. Cowper	.....	1907-1910
C. J. Henderson	.....	1910-1926
G. D. Healy	.....	1926 to date.

Mr. Sawers was well-known in New Zealand as he was previously the Bank's Manager at Wellington. He was Superintendent during the banking crisis of 1893 referred to above. Mr. C. R. Cowper was appointed Superintendent from the position of Inspector for New Zealand.

The Inspectors for New Zealand were:—

W. H. Palmer	.....	1871-1875
E. W. Morrah	.....	1875-1894
Clement Winter	.....	1894-1905
C. R. Cowper	.....	1905-1907
H. K. Bethune	.....	1907-1908
A. P. Webster	.....	1908-1915
R. B. Smith	.....	1915-1919
P. H. Cox	.....	1919-1925
W. F. L. Ward	.....	1925-1932
H. I. Thodey	.....	Appointed July, 1932.

Mr. Ward, in May, 1934, was appointed Deputy Governor of the Reserve Bank of New Zealand, an appointment which was well received by the banking community of New Zealand, by whom he is very highly esteemed.

#### **(6) The Commercial Bank of Australia Limited.**

As this Bank's connection with New Zealand commenced only with the opening of a Branch at Wellington on 1st October, 1912, a detailed review of its early history hardly comes within the scope of this volume, but the following brief outline of its 67 years of existence will prove interesting to banking students.



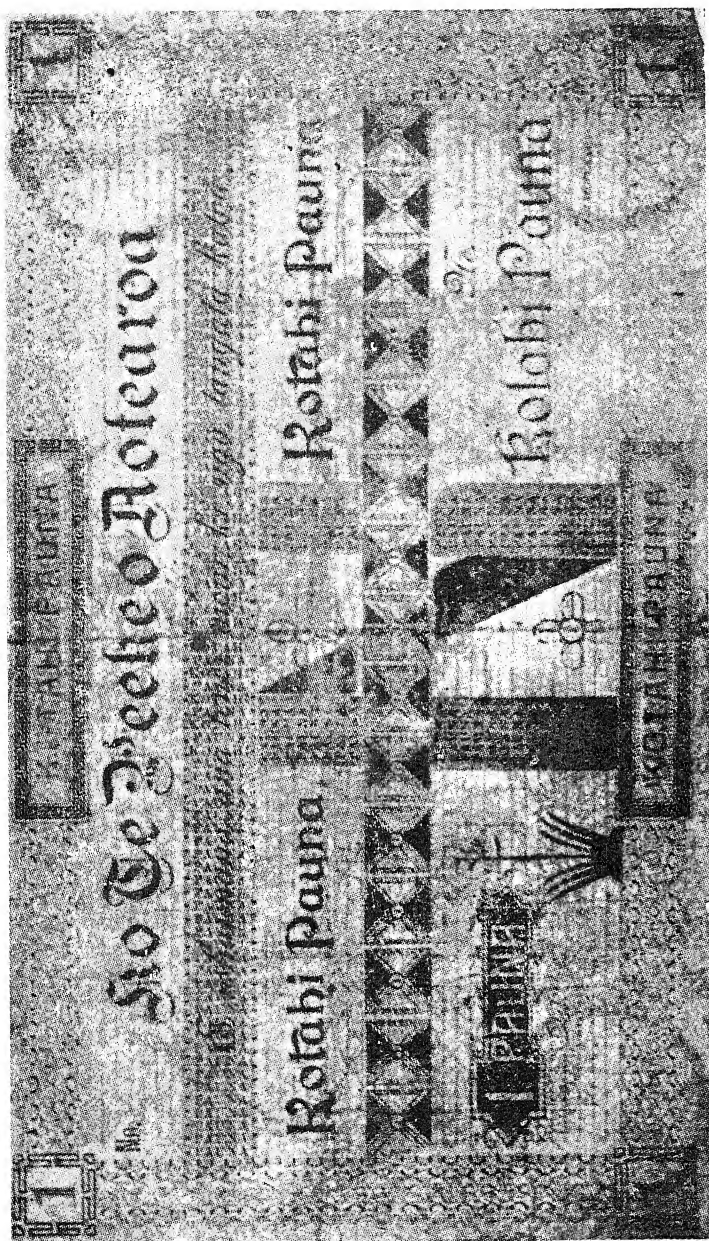
The Bank was founded in Melbourne in 1866 with a nominal capital of £500,000, and its promoters appear to have had in view the special catering for the small trader, farmer, etc., in order to give him "a much larger share of credit than has hitherto been offered by the existing institutions. It is well known that none of the above classes can readily obtain money advances for the legitimate conduct of their business, even on deposit of deeds or other security, principally because the amount usually asked for is so very small." (Prospectus).

The Bank's business was mainly confined to Melbourne and its suburbs for some years, but in 1879 it absorbed the Australian and European Bank and adopted a vigorous policy of expansion, and in 1882 opened a London office.

The following information has been obtained, partly from the *Sydney Bulletin Wild Cat Monthly* of September, 1931, and partly from an historical outline of this Bank's history published by J. B. Were & Son, Melbourne, on 3rd August, 1933.

The Commercial Bank of Australia in its early years made slow progress, but during the 'eighties its business grew remarkably by absorptions and otherwise. Paid up capital £250,000 in 1879 was £1,000,000 in 1887. During this time the dividend had climbed from 8% to 15%. In 1892, 12½% was paid on £1,200,000.

In the 1893 banking crisis in Australia the Commercial Bank of Australia Ltd. was one of the fifteen banks which were compelled to close their doors. The bank suspended payment on 4th April of that year, and the reconstructed bank was registered on the 28th April. Deposits at the time were about £6,500,000, and the depositors received one-third of their amounts in 5% preference shares (£2,117,350), and two-thirds in 4½% deposit receipts maturing in 5 years. Shareholders accepted ordinary shares of £10 paid up to £4 in lieu of a similar number of shares in the old bank. In 1897 £4 per share (£1,200,000) was written off ordinary shares in order to write down assets to a sounder basis. In 1902 ordinary shares, which were by this time fully paid to £6, were



Courtesy of Johannes Andersen, Esq.,

Librarian of the Turnbull Library, Wellington, N.Z.

*The original is a £1 note of a Maori Bank. There is no evidence that the bank ever functioned or that the note was issued: it is not dated, signed, or numbered. The note is attractively designed and printed in various colours.*



again written down by £5/10/- per share (£1,000,000), a large number having been forfeited, only 191,318 out of 300,000 remaining on the share-register. This writing down still left a deficiency of £1,500,000, which was steadily written down out of profits between 1902 and 1920 and premiums received on new issues in 1921 and 1922.

In 1918 the Commercial Bank of Australia Ltd. bought the National Bank of Tasmania, which had a paid capital of £200,000, and a reserve fund of £270,000, for £263,588. The Commercial Bank's paid capital remained practically unaltered until 1920, but the Bank's business was growing so rapidly that new capital had to be got in. In November, 1920, 403,054 10/- Ordinary Shares were offered at 100 per cent. premium to shareholders, but only 259,713 were immediately taken up. In the following year a dividend of 15% was paid, and the balance of the 1920 share issue and another 108,682 Ordinary Shares were subscribed. From 1924 new share issues were an annual event until 1930:

1924—457,394 (one for two); 1925—457,394 (one for three)  
1926—383,158 (one for five); 1927—500,000 (one for five);  
1928—500,000 (one for six); 1929—500,000 (one for seven);  
1930—500,000 (one for eight)—all at 100% premium.

Since 1920 the shareholders have put up £3,808,682, of which one-half was capital and one-half premiums. The premiums were added to reserves which had climbed to £2,315,336 at 30th June, 1931. Paid Capital was then £4,117,350, which includes £2,117,350 of 4% preference money. The dividend of 15% since 1921 was reduced to 11½% for the year ending 30th June, 1931, and 5% for 1932 and 1933.

The progress of the Bank's business in New Zealand may be seen from the following figures taken from the Banking returns at five-yearly periods:—

	1913	1918	1923	1928	1933
<i>Deposits</i> .....	46,839	449,469	1,005,580	1,637,198	1,663,252
<i>Advances</i> .....	24,272	424,444	1,079,749	1,579,535	1,295,704

The Bank Directors appointed Mr. E. P. Yaldwyn to the position of Manager and Attorney for the Bank in New Zealand, in 1912, and he still occupies that position. The

Bank has at date of writing 46 Branches and Receiving Offices throughout New Zealand, and the expansion of its business during its 20 years under his control is evidenced by the figures quoted above.

The widespread character of the business of The Commercial Bank of Australia Ltd. is indicated by a perusal of its last Balance-sheet, which shows Assets aggregating £30,792,842 and a Paid up Capital, Reserve Funds and Profit and Loss Account totalling £6,538,948.

The Head Office of the Bank is in Melbourne, and it has 538 Branches and Agencies throughout Australia and New Zealand, as well as a Branch in London.

### **(7) Private Savings Banks.**

The history of banking in New Zealand would not be complete unless some reference were made to the extent to which the private Savings Banks have contributed towards the financial growth and prosperity of New Zealand. Their early entrance into the business life of the various young communities established in the Colony indicated the need the people felt for some safe depository for their savings. The Post Office Savings Bank Department was not inaugurated until 1867, and prior to 1861 the Union Bank of Australia was the only Bank of any standing yet established, though various commercial Banks of more and less mushroom growth had had a brief existence.

So we find that the first Savings Bank was established in Wellington in 1846—the dates of the establishment of the others being as under:—

Auckland Savings Bank	.....	1847
New Plymouth Savings Bank	.....	1850
Lyttelton Savings Bank	.....	1855
Christchurch Savings Bank	.....	1858
Nelson Savings Bank	.....	1860
Napier Savings Bank	.....	1864
Dunedin Savings Bank	.....	1864
Invercargill Savings Bank	.....	1864
Hokitika Savings Bank	.....	1866

The original legislative authority governing Savings Banks was "The Savings Bank Ordinance" which was passed on 21st September, 1847, to make provision for the management of Savings Banks and for the security of the money placed therein. Under this Ordinance the Governor was appointed President, and he appointed Trustees, not fewer than four nor more than thirty-six, and the Trustees elected a Vice-President from their number. The Trustees were empowered to make all rules necessary, subject to the approval of the Governor. No Trustee was allowed to become a depositor and deposits were limited to not more than £50 in any one year, nor was more than £100 altogether to be held on deposit for any one person. The rate of interest was to be 5%. The funds could be invested in any Colonial Government securities, or in a Bank, or lent on mortgage of freehold property, but in the latter case not more than £500 could be lent to one person, and it was necessary that the property be within 20 miles of the Bank. Only up to one-third of the funds could be so lent out on mortgage. Surplus profits under the Act of 1847 could be placed to credit of depositors, but the "Savings Bank Ordinance Amendment Act 1856" repealed this and laid down that surplus funds were to remain the property of the Bank.

The Savings Banks in the 'fifties had great difficulty in satisfactorily investing their funds, chiefly due to the Government calling in its debentures, and the Savings Bank Act of 1858 was passed repealing all previous Acts, and authorising the whole of the funds to be lent on mortgage of freehold securities, and permitting surplus funds to be utilised in building Bank premises. A further provision was that up to one-half of the funds might be invested by discounting bills, which some of the Banks had already been doing, but this provision was so adversely criticised that in 1860 legislation was enacted abolishing this method of investment for Savings Bank funds.

In 1870 an attempt was made to close all private Savings Banks in the interests of the Post Office Savings Bank, but the difficulty of arriving at an equitable decision as to the

disposal of the surplus profit which had accumulated, resulted in the Savings Banks being allowed to continue in operation. It was a close call, as the Bill was passed by the House, but rejected by the Legislative Council.

Again in 1876 and in 1877 the question was raised, and in 1878 legislation, "The Savings Banks Profits Act," authorised the accumulated profits to be used for the purpose of endowing certain charitable institutions, such as hospitals, benevolent homes, etc. Owing, however, to the opposition of the other Savings Banks the Act was made to apply to Dunedin and Invercargill Savings Banks only. In 1882 this Act was extended to all Savings Banks and the scope of its application was enlarged to include "public libraries" among the authorised endowments.

In 1885 further legislation was passed limiting investment of funds to mortgages of freeholds, Government debentures, fixed deposits with commercial Banks, and Local Body debentures, the last-named form of investment being limited to one-third of the funds of the Bank.

In 1902 the scope of permissible endowments was still further widened to enable educational institutions, free public libraries, and public art galleries to enjoy the benefits of any distribution of surplus profits. This was done chiefly at the instigation of the Dunedin Savings Bank which desired to assist the University of Otago. This measure, "The Savings Banks Profits Act, 1878, Amendment Act," was applied temporarily to Otago only, but in 1906 a fresh Act extended a like authority to all Savings Banks and included "museums" also under the head of "institutions" entitled to benefit.

It was also provided that ten per cent. of a Savings Bank's total funds must first be retained as a reserve fund before grants could be made to approved institutions.

In the early days of the Great War, under "The Mortgages Extension Act, 1914," power was given to impose special conditions on the withdrawal of funds from Savings Banks, but though there was an abnormal withdrawal of funds from some of these banks during the uncertain days



following the declaration of War, within a very few weeks depositors continued their normal operations.

In 1922, a Conference of delegates from the various Savings Banks was held in Wellington to consider amendments to existing legislation, and, though it did not fully embody the wishes of the Banks, the "Savings Banks Amendment Act, 1923," was passed in the following year. Under this Act, the Governor-General became "Patron" instead of President of all Savings Banks, and the Vice-Presidents became Presidents. Trustees were limited to twelve. Annual Balance Sheets were to be certified to by the Auditor, signed by the Trustees, and submitted to the Governor-General for approval. Trustees might devote up to one half of the net profits of the preceding year to any "institution" when accumulated profits exceeded ten per cent. of aggregate deposits. The amount allowed on deposit by any one depositor was increased to £200, and Trustees were empowered to establish superannuation funds for the staffs of the Banks.

We will now proceed to give a brief history of the various Savings Banks which have been established in New Zealand, including those which have gone out of existence.

We would like here to acknowledge to Mr. A. Thomas, of the Dunedin Savings Bank, our deep appreciation of his courtesy in allowing us to make use of his very able treatise on the "History of Trustee Savings Banks in New Zealand," written in 1924, but not published. The greater part of the above, and of the following historical sketches of the individual banks are based on the results of his careful researches.

#### **(a) Wellington Savings Bank.**

On 8th May, 1846, a meeting of the settlers of Wellington was held at "Barretts Hotel," and, as the outcome of that meeting, the first Savings Bank in New Zealand came into being, on a proposal moved by Mr. Henry St. Hill, seconded by Mr. J. Wade.

The progress of the Bank was very slow, and by the end of 1860 there were only 114 depositors with deposits amount-



ing to £2,179, and these figures declined during the Maori Wars of the early 'sixties. From 1865 to 1871 the Bank progressed, the depositors in the latter year numbering 514, the deposits increasing to £9,762. Interest at 5% was paid throughout the period of the Bank's existence. The funds were invested in Government debentures, chiefly at 8%, and on mortgage at 8% to 12½%.

The Post Office Savings Bank commenced operations in 1867, with its Head Office at Wellington. There was then little room for this private institution, and it was closed on 1st February, 1872, by being taken over by the Post Office Savings Bank, in terms of Section 5 of the "Post Office Savings Bank Act, 1869."

#### **(b) Auckland Savings Bank.**

The Auckland Savings Bank originated at a meeting held in Auckland on 3rd December, 1846, at Brown & Campbell's office (where the Yorkshire Building now stands in Shortland Street), those present being Dr. Johnson (Chairman), Rev. Mr. Buddle, Messrs. J. J. Symonds, J. Logan Campbell, John McDougall, Dr. Graham, R. A. Fitzgerald, T. P. Forsaith, I. J. Montefiore, J. Dilworth, Alex. Kennedy, and W. S. Graham. Mr. J. L. Campbell was appointed to draw up rules and regulations. Safes and books were procured from Sydney, and on 7th May, Mr. Campbell announced that "one iron safe complete, 3ft. 7in. high, 2ft. 8in. wide, and 22in. deep" had arrived, also the required books.

"The two managers in rotation, having met, and finding that no deposits had been made had no occasion to remain, and accordingly closed the doors,"—so reads the entry for 14th June, 1847, in the original Minute Book of the meetings of the Auckland Savings Bank Managers and Trustees in the earliest days of the institution. Two managers, in rotation, used to attend at the Bank hoping that thrifty Aucklanders would be induced to come in and "christen" the new safe that had been imported from Sydney, but the thrifty Aucklanders were either non-existent or perhaps doubted

the Bank's capabilities for looking after his hard-earned money. For eleven days the managers sat waiting patiently to make an entry in the books and for something to put in the safe, and, on 19th June, one, Matthew Fleming, so we read in the Minute Book, lodged £10. "One wonders whether he was a thrifty citizen, a born gambler, or what we to-day call 'a sportsman'."

Since that date, the Bank has paid out no less than £3,000,000 in interest alone, and given over £100,000 to charitable and national objects. At 31st March, 1934, the number of depositors' accounts was 157,984, and the total amount of deposits was £7,103,797.

For most of the above interesting extracts we are indebted to an article in the *Auckland Star* of 7th June, 1930.

The Bank's early years were difficult, chiefly owing to the scarcity of suitable investments. In 1850, the Bank had to appeal to the Government for assistance to enable it to meet the demands of depositors and to avoid the necessity of selling out 8% Government debentures, which had recently been purchased at a discount of 10% to 12½%. "The demand of the Government in 1852 for repayment of £46 odd could not be complied with for several months." In 1853, there was still difficulty in finding investments, and an endeavour to invest £700 at 10% on freehold mortgage "met with no response." Restrictions were imposed on depositors, such as permitting only one member of a family to become a depositor, and not allowing more than £50 to be deposited within one year from the date of opening the account.

In the late 'fifties, the increase of population due to settlement under the "forty-acre land grant" system, and the introduction of 10,000 Imperial Troops during the Maori Wars, and 4,000 Waikato military settlers, resulted in a large increase in deposits, but this increase was only temporary, for the withdrawal of troops and the removal of the seat of Government to Wellington in the later 'sixties, resulted in heavy withdrawals, and the Trustees were compelled to realise their securities.

In 1859, the Government granted a site in Queen Street on which to erect premises. Additional land was purchased in 1860 for the sum of £375, and £1,200 was borrowed at 10% for the purpose of erecting a building to cost £1,600.

By 1870, owing to the discovery of gold at the Thames in 1867, the real period of the Bank's prosperity had commenced. Whilst in 1870 the deposits amounted to £14,797, by 1880 they had increased to £128,870. In 1876, a Penny Bank was established, and was a great success.

New banking premises, costing £10,000, were opened in 1884 by the Governor, Sir William Jervois, and branch offices were then opened in a number of the suburbs of Auckland.

A dramatic incident in the history of the Bank occurred in September, 1893, following the banking crisis in Australia earlier in that year, when a "run" on the Bank took place. This "run" was considered to be due to the action of a disgruntled depositor, who, being refused payment of a debit slip on some technical irregularity, quickly gave it out that the Bank had refused to pay him, and it was also stated that the Bank had shares in Mercantile Companies which were considered unsound. The "nervy" state of the community did the rest. But the financial backing of the Bank of New Zealand and the National Bank of New Zealand, Ltd., quickly produced confidence, which was practically restored by the end of the day.

Another run on the Bank took place on the outbreak of the Great War in 1914, but a crisis was averted by the Bank enforcing the scale of notices provided for in the "Savings Bank Act, 1908," and by the timely assistance of the above-mentioned two banks, who stated they were prepared to stand by the Savings Bank. Business very soon resumed its normal course.

The progress of the Bank since 1914 has been remarkable, as disclosed by the following figures:—

<i>No. of Depositors.</i>			<i>Amt. of Deposits.</i>	<i>Reserves.</i>
			£	£
1910	.....	45,771	1,292,091	100,013
1920	.....	68,959	2,802,054	213,534
1928	.....	103,454	5,106,956	506,188
1932	.....	158,599	6,758,038	702,657
1934	.....	157,984	7,103,797	756,720

In addition to building up its Reserves, the Bank has, from surplus profits, endowed various local institutions, to an aggregate amount exceeding £100,000.

This very fine achievement is mainly due to the ability of the Bank's managers, and it is noteworthy that the Bank has had during the whole 85 years of its existence, but six managers:—Mr. James Coombe, Mr. Richard Cameron (48 years), Mr. G. Rountree, Mr. J. M. Barr, Mr. C. Bartley, and its present manager, Mr. T. N. Smallwood. As Auckland and its suburbs progress with the growth of the Dominion, this fine institution must grow in strength and usefulness, to the credit of its executive officers and Trustees, and to the great benefit of the community whose good fortune it is to have such an institution in its midst.

### **(c) New Plymouth Savings Bank.**

This Bank, established in June, 1850, is now the second oldest private Savings Bank in the Dominion. It is interesting to record the names of its first Trustees:—

Donald McLean, J.P.	Richard Brown
Moses Campbell, J.P.	Charles Brown
Samuel King, J.P.	John Hursthouse
Wm. Leech, J.P.	Wm. Cutfield King
Rev. A. Govett	John S. Smith
Rev. W. Turton	Thomas King
Rev. W. Long	Richard Chilman
Rev. T. Gronbe	George Curtis
Edward Dorset	James H. Horne.

It cannot be said that this enterprise was a great success during its first fifty years of existence. Probably the population of New Plymouth was not large enough to make it so.

Certainly the Maori Wars of the 'sixties, beyond resulting in a purely temporary increase in deposits, did not tend to aid in the successful building up of such an institution, and we find that in December, 1870, the number of depositors was only 80, and the deposits amounted to but £1,999 18s. Even by 1880 the numbers had only increased to 133 and £3,420 respectively. Twenty years afterwards, in 1900, the number of depositors had increased to 500 and the amount of deposits to £11,271, and progress has been considerable since that date, as shown hereunder:—

	<i>No. of Depositors.</i>				<i>Amt. of Deposits.</i>
1910	.....	.....	.....	.....	917
1920	.....	.....	.....	.....	1,150
1930	.....	.....	.....	.....	8,330
1934	.....	.....	.....	.....	12,134
					£26,132
					45,956
					429,884
					616,044

The progress since 1920 has been phenomenal and appears to synchronise with the appointment of the present manager, Mr. George E. Dinmiss in 1920, and the strengthening of the Board of Trustees, who adopted a much more progressive policy. In 1931, the new Bank premises in Devon Street, erected at a cost of £18,000, were officially opened by the Governor-General, Lord Bledisloe. The decision to build was made in 1929, owing to the rapid expansion of the Bank's business.

It is evident that under an able control and progressive policy, this Bank will continue to extend its usefulness in the town and district.

#### **(d) Lyttelton Savings Bank.**

This small institution was established in 1855, but did not make much progress so far as Lyttelton was concerned, but a branch established in the neighbouring city of Christchurch in 1858 was more flourishing, and, in 1864, became the Chief Office. In 1866, there were 461 depositors, with deposits amounting to £7,654. However, by 1870, owing to the opening of the Post Office Savings Bank, the depositors had fallen to 125 in number, and early in 1871, the business of the Bank was taken over by the Government institution.

**(e) Nelson Savings Bank.**

This Bank was established in 1860, chiefly at the instigation of the late John Tinline, to whom Nelson City is indebted in many ways, who moved the Provincial Council to take the necessary steps.

The Bank was reasonably successful, and after ten years had 438 depositors, with deposits amounting to £5,270, and by 1880 there were 769 depositors and deposits were £15,418.

In 1890, the figures were 878 and £17,363 respectively.

But the Bank's career ended somewhat dramatically in 1899, a run on the Bank caused by the embezzlement of some of its funds by the manager, compelled it to go into liquidation. The depositors received a return of 18s. 6d. in the £, and friends of the defaulting manager, who had been a popular figure in the business life of Nelson, made up the deficiency, so that the depositors received the full amount due to them.

**(f) Napier Savings Bank.**

The Napier Savings Bank opened in 1864, and during its thirty-four years of existence never succeeded in getting much of a hold on the goodwill of the thrifty-minded amongst the people of Napier. The population was small, and the Post Office Savings Bank was established three years after the Bank opened. By 1880, the depositors numbered 253 and the deposits amounted to £4,659. In 1898, the Bank went into liquidation, and the surplus of £491 8s., after repayment of all liabilities, was paid over to the Colonial Treasurer on 20th February, 1899.

**(g) Dunedin Savings Bank.**

The Dunedin Savings Bank, in 1924, issued as a souvenir of its Diamond Jubilee, a brochure giving a brief historical sketch of its career, and much of the following information is gleaned therefrom.

Dunedin was a town of small size up to 1861, when gold was discovered in Otago, though in the thirteen years which

had elapsed since the founding of the Province of Otago, it had made steady progress. But within three months of the proclamation opening up the goldfields, men were arriving at the rate of 1,000 per day—they were termed the “new iniquities”! Before very long, gold to the quantity of 8,000 ounces per week was being brought down from the diggings. In spite of the exodus of men lured from every occupation by the spell of the goldfields in Central Otago the population of Dunedin increased during 1861 from 2,262 to 5,956.

Some time in 1863, a meeting of citizens resolved to establish the Dunedin Savings Bank, and Government authorisation having been obtained, Sir George Grey, then Governor, appointed twenty Trustees. It is of interest to record their names, many of which have been perpetuated in various ways in the city and its beautiful surroundings:—

John Bathgate	Frederick Y. Moss
John Cargill	Arthur W. Morris
Richd. S. Cantrell	Wm. Mills
John Gillies	Richard B. Martin
George Hepburn	George McLean
John Jones	James Rattray
John Logan	Frederick H. Richardson
Thomas Dick	Wm. H. Reynolds
George Duncan	Alfred R. C. Strode
Thos. S. Forsaith	Charles H. Street.

The first Vice-President was Mr. A. R. C. Strode, Resident Magistrate, the Governor being President. The first manager was Mr. Edmund Smith.

To provide itself with necessary funds, the Bank arranged for a cash credit of £1,000 with the Bank of Otago, on the security of a promissory note signed by the Trustees.

The Bank was an immediate success, and at the time of its opening in September, 1864, the depositors numbered 127 and the deposits amounted to £717. In the following ten years the depositors increased to 1,437 and the deposits to £33,856. In 1874, the present site was purchased by the Bank.



Courtesy of the Bank of New Zealand.

*The present premises (Head Office) of the Bank of New Zealand,  
Wellington, N.Z.*

(To face page 120).





In 1870, an attempt was made by the Government to take over the Bank, and this was actually agreed to by the Trustees, but, fortunately for the people of Dunedin, difficulties arose to prevent the transfer being made.

It was at the instigation of the Trustees of the Dunedin Savings Bank that power was given to Savings Banks in New Zealand to devote their surplus profits to the endowment of public institutions.

The South Seas Exhibition in 1889 gave an impetus to the progress of Dunedin, and by 1894 the Bank's figures showed depositors 3,698, with credit balances amounting to £145,024.

One of the chief difficulties of the Bank, as with other similar institutions, was the finding of satisfactory investments. It was paying 5% on deposits and some of its investments were earning only  $4\frac{1}{2}\%$ . So, in 1896, negotiations were entered into with the Government with the object, either of handing over the institution to the Post Office Savings Bank, or of going into liquidation—any surplus to go to the Dunedin Hospital. Advertisements were actually inserted in the daily papers notifying that the Bank proposed to cease business.

But the greed of the Government, which desired to keep the surplus funds for itself, instead of handing them over to the Hospital, so agitated the people, that the Bill was withdrawn and the Bank continued in being. Interest rates were reduced to 4%,  $3\frac{1}{2}\%$ , and in 1899 to 3%.

The Bank's figures showed no progress in the twenty years from 1894 to 1914, indeed, they showed a definite decrease, the depositors falling to 2,444 and deposits to £108,221. But 1914, while signalised by a mild run on the Bank when war was declared in August, was the first year of a decade of striking expansion, for in 1924 the depositors numbered 9,111 and the deposits amounted to £862,310. Benefactions by the Bank during this period amounted to £5,250, making £27,555 donated to various institutions during the sixty years of the Bank's existence.

But even this tangible evidence of progress is entirely eclipsed by the figures of the following ten years. By 31st

March, 1934, the number of depositors had increased to 31,981 and the amount of the deposits to £2,191,290, and the community had received the benefit of total benefactions to the amount of £51,096. The University of Otago is specially indebted to the Dunedin Savings Bank for many handsome grants towards its varied activities, and the relief of distress has also been a feature of the many forms of assistance to the community, resulting from the able conduct of this fine institution. It is indeed fortunate for Dunedin, and Otago generally, that the Bank did not come to an untimely end during its earlier and more difficult years. The Bank is undoubtedly destined to grow to even greater usefulness. It is a monument to the ability of its Trustees and executive officers, and particularly those in whose care it has made such remarkable progress during the last two decades.

**(h) Invercargill Savings Bank.**

This institution's early history is somewhat shrouded in mystery, but apparently its beginning dates from 1864, for on 1st August of that year, the names of the following were gazetted as Trustees:—

His Honour J. A. R. Menzies (Vice-President)

Messrs. A. T. Adamson

Wm. H. Calder

Andrew I. Elles

Jabez Hay

Jeremiah Hamett

John C. Henderson

Henry McCulloch

Donald McDonald

David Mitchell

Gerrard Mueller

Charles Rout

Theophilus Steele

John Squires

Thomas Watson

John McDonald.

An office was opened in Dee Street, Invercargill, on 10th December, 1864, and by the end of 1865 the depositors numbered 173, and credit balances amounted to £3,675. For over thirty years the Bank paid 6% on deposits, in spite of many difficulties in finding suitable investments, especially during the 'sixties and 'seventies. By 1874 the depositors had increased to 888, and balances to £7,221.

The depositors in this Bank have the right of drawing on their accounts by cheque, this being the only Savings Bank that has granted such a privilege, and, needless to say, the commercial banks view this arrangement unfavourably, as many small shopkeepers take advantage of the favourable terms offered by the Savings Bank. Whilst in 1914 the depositors numbered 1,876, by 1924 the number had increased to 4,908, and the deposits from £49,437 to £262,795. The maximum deposit is limited to £200, so far as interest allowed is concerned.

The Bank has made splendid progress of late years, and at 31st March, 1934, deposits amounted to £797,228, chiefly invested on first mortgage (£649,991). Up to that date over £10,400 had been donated to a wide variety of public purposes.

A noteworthy feature in the progress of this successful institution is the "family" nature of the appointments to the position of manager. The first manager was Mr. Archibald Bonar in 1864, and on his retirement in 1866, Mr. Thomas Brodrick was appointed and continued in office for thirty-eight years until his death in 1904, when his son, Mr. Radford H. Brodrick, filled his place. On Mr. R. H. Brodrick's retirement in 1921, his nephew, Mr. Norman A. Brodrick was appointed and still occupies the position.

The Bank has opened other Branches, including a Branch at Gore in 1922, and is, we think, destined as the years go by to continue to play a very useful and very definite part in the commercial life of the southernmost portion of the Dominion.

#### **(i) Hokitika Savings Bank.**

Mr. Archibald Bonar, who was the first manager of the Invercargill Savings Bank, moved to Hokitika in 1866, and it was through his energy that the Hokitika Savings Bank was established at the end of that year.

The Bank has been a well-managed and prosperous institution from its commencement. In 1866 the depositors num-

bered 77 and the deposits amounted to £701, and by March, 1931, the depositors numbered 1,814 and the deposits had reached £132,782, the chief growth having taken place since 1915. Besides building up substantial reserves, the Bank has made liberal donations to the Westland Hospital, the Free Public Library, and the Museum.

The funds are lent only on first mortgage of freehold. It is interesting to record that the first loan was made to a professional man at 20% interest, the borrower having to give, in addition to his freehold property, security over his furniture and books. When he began to make repayments, the money was not at once taken off the loan, but he had to open a deposit account on which he was allowed 5% and could only reduce his loan when he had accumulated £100. The way of the borrower was hard in those days!

In 1871, the mortgage rate was reduced to 15%, and the minutes record that a would-be borrower proposed 12½%, but "the request could not be entertained."

The above particulars were obtained from a speech made by Mr. William Duncan in 1907 when handing over a cheque for £400 to the Free Public Library.

The first Manager, Mr. Archibald Bonar, was succeeded by his son, the Hon. J. A. Bonar. Mr. Wm. Duncan followed him in 1879 and continued in office until 1913, and the Bank owes much to his outstanding ability and high integrity.

Many of Westland's leading men have acted as Trustees of the Bank, which continues to fill an important role in the commercial life of Hokitika.

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## CHAPTER III.

A SURVEY OF GENERAL BANKING DEVELOPMENT  
IN NEW ZEALAND.

We think that a brief survey of the general development of Banking in New Zealand, with a view to recognising and stating its distinctive features and tendencies, should provide an interesting and useful exercise at this stage.

**(a) English Origin.**

At the beginning, the resources and the ideals that were made the nucleus of our Banking system must have come, like all the other resources and ideals of this new country, from Great Britain. This means that the first capital resources that were available were composed largely of capital and credit resources which came from England, either direct or through Australia. The ideals and methods of Banking in the Dominion were also, at the beginning, those of England. They reached us, in the beginning, through Australia.

It is interesting to note, firstly, the development of an entirely different system of Banking administration and contact with the public. In England, at the time when the Banking system of New Zealand began, there were many private bankers and the English system comprised a large number of purely local banks. Each town, which by its size and importance was worthy of a bank, desired to have its own bank. The capital was usually raised locally and the management was in the hands of those who knew and were trusted by the local constituents of the bank and who claimed, as one of their principal qualifications, a close knowledge of local requirements and characteristics.

This was at one time the universal banking system of the civilised world. Lack of transport facilities, with the consequent lack of postal facilities practically dictated this form of

Banking. It is still the dominant system in many parts of the world, even in countries which in other directions show a tendency to abandon old methods in favour of new. In other countries, however, there has grown up a system of banking which is distinguished, firstly, by the creation of corporations to conduct the business of banking, and secondly, by the adoption by those corporations of a system of opening branch banking offices throughout the countries in which they operate.

#### **(b) Australasian Developments.**

New Zealand, like Australia, has developed its banking system entirely upon the basis of large corporations carrying on business through a head office and a number of branches. Thus there are, as detailed elsewhere, six trading banks carrying on business in New Zealand, but these six have so far carried out the branch system that there are over 400 separate bank-offices open for business throughout the Dominion.

#### **(c) The Branch System.**

We are of opinion that the Branch System possesses advantages that are not held by the system of providing purely local banks, and that it has proved to be well suited to the conditions of New Zealand. It gives a geographical "spread" to the risks of banking, and adverse conditions and happenings affecting the banks' interests in one province can be offset by the normal or specially favourable conditions obtaining in other provinces. It provides a wide range in all classes of banking practice. This gives the bank opportunities of employing a large staff with facilities for gaining varied banking experience and increased chances of promotion. The exercise of the banks' ordinary functions under such a system tends to marshal wealth and resources which are abundant and seeking outlet in one part of the Dominion, and make them available for the stimulation of enterprise in another part.

**(d) The Marshalling of Resources.**

In another chapter we deal in detail with the banker's function of marshalling the cash and credit resources of the Dominion and affording facilities for making them available when and where they can be usefully employed. As four of the six trading banks in New Zealand are Australian banks, and as all of them have raised capital in other parts of the Empire they have performed the service of making available for the development and industry of the Dominion, some of the surplus capital resources of other countries.

Our banks receive and record the deposits entrusted to them, under two headings, viz., Current Accounts, comprising deposits repayable at call, and Fixed Deposits, comprising deposits placed with the bank for a fixed stipulated term.

**(e) The Current Account System.**

The current account deposits represent the current credit resources of the community. In September, 1934, they totalled £22,000,000. Some of this may be described as representing semi-permanent deposits. It includes, for instance, the money of a salaried man, being gradually accumulated until it reaches in amount, a sum capable of being placed in some other form of investment. This total also includes the current cash resources of the trading community held by the Banks in their capacity of clearing house for that community. It is the reservoir that maintains and regulates the flow of seasonal receipts and disbursements and accumulates the funds for periodic payments.

The New Zealand banks allow no interest on current account balances; instead they make a half-yearly charge for each such account, to cover the cost of the service represented by keeping the account and honouring the customer's cheques.

**(f) The Fixed Deposit System.**

The total of the Fixed Deposits in the hands of trading banks, amounting towards the end of 1934 to over £40,000,000,



represent a kind of temporary loan capital received from the public. The fixed deposit differs from the current account deposit in that it is made available to the bank for a specified period and the bank directors therefore may use it in the knowledge that it is left to their control for that period. It differs from ordinary capital in that it is repayable to the investor at the end of the specified period. The bank fixed deposit for a short period (three months is the minimum period) is the nearest approach New Zealand has had up to the present time, to a short-term money market, but it hardly merits consideration from that point of view. The deposits are non-transferable and there is therefore no market for them; they represent merely individual investments.

**(g) The Associated Banks.**

The banks act in concert in fixing uniform rates of interest on fixed deposits from time to time.

In all matters of common interest to the New Zealand banks they act through an organisation known as the Associated Banks. This organisation elects a chairman annually and its members, nominees of the constituent banks, meet from time to time as meetings are necessary. They fix and publish interest rates and speak on behalf of the banks whenever any aspects of the work or interests of the banks require public utterance.

**(h) Central Banking.**

In 1933 an important development took place in New Zealand banking, in the incorporation of the Reserve Bank of New Zealand by a special statute. This institution is charged by statutory provisions with the function and duty of exercising control over monetary circulation and credit in New Zealand to the end that the economic welfare of the Dominion may be promoted and maintained. It is specifically authorised to organise and operate a clearing house system for the trading banks, and with this in view it acts as the banker of those banks and holds their reserves.

This development arises out of the recognition and growing belief that the control of the community's currency and credit, the direction of its banking policy and the exercise of those banking functions which directly affect commerce and industry, should be in the hands of an institution primarily designed and managed in the public interest.

The constitution and functions of the Reserve Bank are fully dealt with in Chapter XI of this work.

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## CHAPTER IV.

## CONSTITUTION OF BANKS.

## (1) The Legal Constitution.

## (a) Legislation Affecting Banks in New Zealand.

This part of the present chapter might well be introduced by the statement that "Banking," like any other division or branch of our trading or economic life, is not (and cannot be) governed by a complete and self-contained code of law, relating to itself. Of the law of New Zealand governing and affecting our banks, a very small proportion is in the form of Statute law. The bulk of it lies within that great body of English law known as the Common law. Much of this is common to bankers and all other traders, some of it is peculiar to bankers, but any of it at any time may be invoked and applied to the relative rights and powers of the banks and other members of the community.

The principal statutory provisions relating to banks in New Zealand are contained in "The Banking Act, 1908." Its provisions and operation may be summarised as follows:

Firstly, there are certain matters of administrative and financial policy which are usually left to the members of corporations to prescribe according to their own desires and opinions. The Banking Act, however, for the protection of the public, has intervened in these matters in relation to banks carrying on their business in New Zealand. For instance, it is provided by Section 4 that, notwithstanding anything in the Charter of any such bank incorporated in New Zealand, the number of its directors "is hereby fixed at not less than five nor more than seven." This is obviously intended to lessen the danger of anything approaching "one man" control.

Again, it is provided by Section 5 that notwithstanding anything in the bank's charter, or in any other Statute law,

a bank incorporated in New Zealand and carrying on the business of banking only, may, by extraordinary resolution, increase its capital from time to time. Such an increase may be made at any time, and from time to time, and new shares comprising such increase may be offered for subscription, or be otherwise allotted, with or without special privileges, priorities, and preferences, as may be deemed expedient.

This provision is easily traceable to past experiences. In a period of financial crisis a bank might desire to increase its capital resources for the purpose of increasing confidence in its financial stability. In the very nature of things it may desire to offer a special inducement to existing shareholders and others to supply the necessary capital at that stage. Prompt action, unhampered by restrictive capital provisions in the Memorandum of Association or incorporating Act, or even by an elaborate procedure is, in such cases, always necessary. It is with these considerations in view that the provision in question has been enacted. This provision, however, does not apply to the Bank of New Zealand. The Bank of New Zealand, in its incorporating Act and its amendments, has precise and particular provisions of this nature, and, therefore, following a well recognised principle that an enactment of general import and scope shall not derogate from one of particular import and scope, it was held that this section does not apply to the Bank of New Zealand. *Kirkcaldie v. Bank of New Zealand* (1913) 33 N.Z.L.R., 737.

The foregoing illustrative excerpts from "The Banking Act, 1908," are typical of the provisions of that Statute designed to protect the public generally, and banks' creditors in particular, in view of the special functions of banks, and the intimate effects of their transactions and policies on the commercial life of the community. The remaining provisions of "The Banking Act, 1908," will be dealt with in detail in the latter part of this chapter.

**(b) The Legal Constitution of Banks in New Zealand.**

A statement of the nature of a bank might be made from either one of two standpoints. With a view to such a statement, an examination might be made of the financial constitution and legal basis of the bank, or, with a similar object in view, a survey and statement might be made of its functions.

A separate part of this present work deals with the functions of the bank, but the present part deals only with the constitution of our banks. This subject requires a subdivision, for a bank may be studied from the point of view of its legal constitution or from the point of view of its financial constitution. It is proposed, firstly, to deal with the legal constitution.

There are six trading banks, and a Reserve bank, operating in New Zealand, and they are all corporations. The term "bank" is defined in the Banking Act in the following words:—

“‘Bank’ means any person, partnership, corporation, or company carrying on in New Zealand the business of banking.”

It will be noted that that definition includes persons or firms as possible bankers. It is highly problematical whether a private bank (whether owned by an individual or a firm) is ever likely to commence business as a New Zealand institution, but it is still possible for such institutions domiciled in other parts of the world to commence operations here and to come under the provisions of our Banking Act.

Originally, all bankers were private bankers, *i.e.*, the business of banking was in the hands of individuals or firms, as distinct from corporations or companies. Banking business so constituted suited the conditions of those times; businesses were comparatively small; the areas of their operations were comparatively limited; cheque transactions were comparatively rare; and local conditions or customs were often all-important. That state of things has ceased

in practically all countries of the world, and the tendency is universally towards the banking corporation.

It is interesting to note, however, that a relic of the era of private bankers is to be found in our present-day Bills of Exchange Act, and in a certain business habit. The Bills of Exchange Act defines a "crossed cheque" as one bearing on its face two transverse parallel lines, either with or without the addition of the words "and Co." In the old period referred to above, when a merchant sent his cheque to another person, he adopted a custom, which had grown up, of crossing the cheque and writing between the transverse lines the name of the payee's banker, thus:—

*Cox & Company*

If, however, the sender did not know the name of the payee's banker, but wished nevertheless to obtain the protection afforded by a crossing, he would add the almost universal ending of a banker's name, namely "and Co.," and leave the payee to prefix the actual name when he received the cheque. That is the origin of the custom of writing the words "and Co." between the lines of a crossed cheque; a custom that survives to this day in the daily habits of many business men, who could not give any explanation, other than habit, for the practice adopted by them.

### **(c) Banks as Corporations.**

As pointed out above, all the banks now operating in New Zealand are corporations. This term is used in the definition of "Bank" which appears in the interpretation clause of the Banking Act, and it is desirable that we should understand precisely what is behind the legal conception of a corporation. It might be defined as a "fictitious

being," clothed by the law with an idea of personality attributed to it for the purposes of commercial and legal convenience. An individual or a person might be distinguished from a corporation in the following ways:—(1) He has certain inherent rights in any civilized community; (2) He enjoys existence for a limited period, the ending of which is certain; (3) His choice of occupation for the use of his particular qualities, and his pursuit of a business or calling is a matter in which, within limits, he may please himself. A partnership or unincorporated association of persons is simply a temporary coalescence of individuals jointly possessing and exercising the same rights and activities.

On the other hand, a corporation is an artificial creation of the law, distinct from the persons who comprise its membership. A well-known English author on the subject of companies wrote: "It is not like a partnership, firm or family, a mere aggregate of its members. It is, in point of law, a person distinct from its members. If the members of an incorporated company are collected together in one room, you cannot see the company." A learned Judge once said: "The company is a mere abstraction of law."

A corporation has no inherent rights and powers, but only those rights and powers which are given to it by the legal sanction which brings it into being. Within the scope of these powers and rights, its acts are said to be *intra vires* (within its powers); beyond the scope of these defined and stipulated rights, its acts are said to be *ultra vires* (beyond its powers). This aspect of the matter will be found to be dealt with in more detail in a later chapter headed "Banker and Customer," when considering the special care necessary by a banker when a corporation is his customer. Further, a corporation does not suffer the physical ills of decrepitude and death and, as contrasted with an individual, might expect to carry on and function in perpetuity.

It is interesting to note two statutory provisions in New Zealand relating to bankers, which illustrate the limitations

of the powers of corporations. In the few years immediately following the close of the Great War, New Zealand suffered an appreciable housing shortage, and special legislation was passed to deal with the situation. In "The Housing Act, 1919," by Section 27, it was provided that notwithstanding anything to the contrary in the charter or constitution of any bank in New Zealand, it should be lawful thereafter for any such bank to acquire land or houses, or to build houses or dwellings for the members of its staff, and to sell or let such houses to members of the staff on such terms as it thought proper. Again, Section 27 of "The War Legislation Amendment Act, 1916," was enacted to legalise contributions and donations which had been made to various patriotic and other funds by the Bank of New Zealand out of its ordinary funds. Both these provisions were made because transactions of the kind thus legislated for, were found to be outside the scope of the banks' powers as set out for them in their incorporating Acts, and therefore *ultra vires* of the banks. The legislation in question in one case extended the powers of the banks to make the housing transactions lawful, and, in the other case, ratified and legalised a transaction of a bank which would otherwise have been *ultra vires*. The fact that legislation was found necessary to meet the situations thus raised, affords a striking recognition and example of the limitations under which corporations carry out their functions and achieve their objects.

There are seven banking corporations (excluding Savings Banks) in New Zealand. Of these three are incorporated by special Act of Parliament; three are incorporated under general Companies Acts, and one is incorporated by Royal Charter.

#### (d) Incorporation by Special Statute.

This is a method of incorporation commonly adopted when the proposed corporation is designed to possess and



exercise extraordinary features and powers. 'It is the appropriate form of incorporation for a body that seeks to exercise a monopoly, e.g., a Gas Company, a Water Company, or a Ferry Company. This gives Parliament an opportunity to watch the public interests closely by scrutinising the objects and powers, limiting charges and profits, and prescribing forms of account and enjoining publicity where it is deemed desirable. It is also the appropriate form of incorporation for a body whose powers touch intimately and widely the rights and habits of the public generally and whose functions may involve special dealings with governmental bodies. Hence it is often found appropriate as the charter of existence of a bank. In New Zealand the three banking institutions so incorporated are described in order of their incorporation. The Bank of New South Wales, was incorporated in 1850 in New South Wales by the legislature of that State. In 1861 it received statutory recognition in New Zealand by an Act of Parliament (Bank of New South Wales Act, 1861) giving and regulating its powers of conducting banking business and issuing notes in New Zealand. Then the Bank of New Zealand was incorporated in New Zealand in 1861 by "The Bank of New Zealand Act, 1861." Since then it has been the subject of several enactments of the Parliament of New Zealand. Finally there is the Reserve Bank of New Zealand. The Charter of its existence is "the Reserve Bank of New Zealand Act, 1933," and it actually came into existence on the first day of April, 1934, by virtue of a notice to that effect published in the *Government Gazette* of the first day of March, 1934, pursuant to Section 7 of the "Reserve Bank of New Zealand Act."

A bank incorporated under a special Act of Parliament derives its being and powers from that Act. It becomes a legal entity at that point of time, or on the performance of that act which is prescribed in the statute, for that purpose.

**(e) Incorporation Under General Companies Acts.**

This is the form of incorporation provided by the Parliaments of many countries for proposed companies that can find, within the general scheme and provisions of the Companies Act, sufficient scope for the formulation and publication of their financial schemes and general powers and objects. It may thereafter be the subject of a special enactment to extend or confirm its objects and powers. Thus the Union Bank of Australia was incorporated in England in the year 1837 under a deed of settlement (a document that may be described as the private counterpart of a Memorandum of Association). A few years later it commenced business in New Zealand and received recognition and powers of note-issue by an Ordinance of the Legislative Council of New Zealand in 1844. In 1880 an Act called the Companies Acts 1862 to 1879 was passed in England, enabling companies that had registered with a Deed of Settlement to re-register with a Memorandum of Association. The Union Bank took advantage of this and was incorporated as a Limited Company under the name of the Union Bank of Australia Limited on the 1st May, 1880. A private Act was passed in New Zealand in 1882 intituled the Union Bank of Australia Limited Act and this statute recognised the English re-registration of 1880, repealed the old New Zealand Ordinance of 1844 and re-enacted the Bank's powers of note-issue.

The National Bank of New Zealand Limited was registered in England in 1872, under the English Companies' Act then in force. In 1873, in New Zealand, it also procured the passage of a special Act which deals mainly with its powers of note issue.

The Commercial Bank of Australia Limited was incorporated in Melbourne in 1866, under the Victorian Companies' Act. In 1913 it opened branches in New Zealand and a special Act was passed in New Zealand that year, "The Commercial Bank of Australia Ltd. Act, 1913" dealing with its powers of note issue.

A bank incorporated under the general Companies Acts derives its being and its powers from those Acts. It becomes a living entity when, in compliance with the provisions of the Companies Act, it formulates its constitution and powers in a Memorandum of Association, registers that Memorandum in the appropriate office and receives a Certificate of Incorporation.

**(f) Incorporation by Royal Charter.**

The Bank of Australasia was in the year 1835 incorporated by Royal Charter.

The granting of a Royal Charter is a prerogative of the reigning Sovereign. The Charter, like the special Act of Parliament, or the Memorandum of Association registered under the general Act, sets out the constitution, functions, powers and objects of the proposed Company, but it derives its force from the expressed will of the Sovereign. It is a prerogative that is now more and more sparingly used. It may be taken for granted that when a Company is incorporated by Royal Charter, its original members or founders are of undoubted financial and general standing, and that conditions attaching to the incorporation by Charter will make for more than usual financial stability by attaching more or less onerous obligations to shareholders.

**(g) The term "Charter" in New Zealand Banking Act, 1908.**

In this enactment the term "Charter" is by the interpretation clause adopted as a generic term for all forms of incorporation of banks operating in New Zealand. The clause provides that in that "Charter of a Bank" means the Act of Parliament, Royal Charter, Letters Patent, Deed of Settlement, Memorandum of Association or other instrument by or under which the bank is incorporated. Thereafter, in the Act, the term "Charter" is used in that generic sense.

**(h) Transfer of Bank Shares.**

We have already in this chapter dealt with two matters, usually left to members of corporations to determine for themselves, which are prescribed for Banking Corporations by the "Banking Act, 1908"; they are—the number of directors to be appointed to manage the Company, and the conditions on which the capital may be increased.

Another matter which is usually left to the self-determination of members of corporations (expressed in their Articles of Association), but which, in the case of banks subject to New Zealand law is specially dealt with in "The Banking Act, 1908," is the right of a member to transfer his shares.

*Prima facie*, the members of a Company have a legal right to transfer or dispose of their shares as they wish. Even though the Articles of Association place restriction on the right to require registration of transfers of shares, the holder of a share, like the owner of any other species of property, is entitled at law to dispose of his property. By sale or other disposition the holder may transfer the equitable and beneficial interest in his shares to his chosen transferee and if registration of the transfer is refused, thus leaving the legal estate still in the transferor, the passing of the equitable estate is nevertheless effected. But transfers of bank shares are the subject of special provisions of Section 6 of the Banking Act, and are thereby placed on a different footing.

It is provided that notwithstanding anything to the contrary in the Charter of any bank, no transfer of any shares of the bank on which there is any liability shall be complete or shall operate to vest those shares in any person, or to relieve the transferor from liability in respect of those shares, until such transfer is approved of in writing by the directors of the bank; and further, that this provision of the Act shall be sufficient authority to the directors to refuse their approval to any transfer of shares on which

there is any liability, without assigning any reason therefor. Where any bank shares are recorded in a branch share register kept overseas, the duty of approving or disapproving, in writing, of transfers, may be delegated by the directors to an attorney or attorneys, in that country.

The object of this provision is to protect the uncalled capital of the bank as an asset for the payment, if necessary, of its creditor's claims. Experience has shown that, when the first stages of a financial crisis are observed or feared, some shareholders will transfer their shares to "men of straw"; using this device to avoid liability for future calls. The presence of shareholders of standing, with the resultant presence of a valuable right of recourse on them to meet depositors' and note-holders' claims is an appreciable ingredient in the atmosphere of confidence which a bank gathers round itself. In the public interests, the directors, who may be expected to be as quick as the shareholders to scent approaching troubles, are thus given a means of preserving this right of recourse on solvent shareholders for calls on account of uncalled capital.

A share certificate for bank shares given under the hand of one or more of the directors of the bank and purporting to be issued under the authority of "The Banking Act, 1908," shall be conclusive proof of the title of the person therein specified to the shares.

**(i) The Bank Returns.**

"The Banking Act, 1908," also enacts that the banks doing business in New Zealand shall keep certain accounts and publish certain returns in forms prescribed by the Act. To comply with this provision each bank is required firstly, to make up, at close of business on each Monday, a statement disclosing a full and correct account of the assets and liabilities of the bank at each branch or place where it carries on business. On the last Monday of the months of March, June, September and December in each year each bank must prepare a general abstract, compiled from those

weekly accounts and statements and showing the average amount during that quarter of the (aggregate) assets and liabilities of the bank. There must be subjoined to that general quarterly abstract a statement showing the paid-up capital of the bank as at the close of the quarter, the rate and amount of the last dividend declared to the shareholders, and the amount of the reserved profit at the time of declaring that dividend.

In the case of each bank, every such quarterly abstract and statement, verified by the oath of a responsible officer, shall be published as soon as conveniently may be in the *Government Gazette*.

All the foregoing provisions are explained and exemplified in detail in a succeeding Chapter; V (2). It is not necessary to deal further with the subject matter in that way in this chapter. It is included here firstly to ensure completeness in our summary of the legislation affecting banks; secondly to deal with the object of the statute in prescribing these requirements.

The real object of these provisions lies in the belief that publicity is one of the best safeguards of public interest at all points where banking policy touches closely the business and economic habits of the people, or where the interests of bankers and general public may tend to conflict.

The banks are, in one aspect of their work, merely clearing houses for the settlement of private debts and obligations. In another respect they are the accountants of the aggregate dealings of the community, internal and external. They alone are in a position to record the aggregate turnover of our two recognised forms of internal currency, viz:—bank notes and cheques.

The quarterly figures are keenly studied and discussed, quarter by quarter as they appear. They reveal the tendencies of the aggregate trading of the Dominion and are therefore of great interest (sometimes of intense interest) to our bankers, statesmen, and industrial and commercial leaders and administrators.

The requirement as to the publication of profits distributed and reserved is designed to procure publicity as a corrector of the tendency for undue profit-earning at the expense of the commercial and industrial health of the country.

**(i) The Books of a Bank.**

In "The Banking Act, 1908," sections 19 to 22 inclusive, are grouped under the above heading. They fix the rights of litigants and the State to procure inspection and discovery of accounts and entries in bankers' books.

Here again bankers are placed under obligations more onerous than those placed on other traders or business houses. It is a common error amongst bank officials to view these sections as being, in some way, a tribute to the accuracy and integrity of a bank's records, with a consequential concession to bankers to produce *copies* of their books where other parties would be required to produce the books themselves.

A study of the sections does not seem to justify this view. On the contrary, the most obvious effect of the sections is that a banker must produce his books, (or copies thereof) and allow access to them, in circumstances in which no other party could be required to do so. A *party* to litigation must, according to the prescribed and established procedure of our Courts, if required, produce his books in Court, or allow access to them prior to the hearing, to enable his opponent to prepare his case and to bring to the notice of the Court, any *relevant* entries in those books. Thus if Brown sues Smith, he may, in the preparation of his case, procure an inspection of Smith's books, or he may require Smith to produce them at the hearing. But he could not place Jones, a man not a party to the action, under this obligation or duty to produce his (Jones') books. He may however, have access to the books of Smith's banker, although that banker is not a party to the proceedings. Section 21 provides that on the application

of any party to a legal proceeding, a Judge, or the Court, may order that such party be at liberty to inspect and take copies of any entries in the books of a bank for any of the purposes of such proceeding.

The reason for this provision is fairly obvious. The account of a trader, as a customer of his bank, as it appears in the bank's ledger, is, or should be, merely a transposed duplicate of the most important account in that trader's set of books. In a well-ordered business, all cash takings (including cheques) are paid into the bank, and all payments are made by cheque. The cash book is, therefore, an account which could be appropriately headed "The bank in account current with the customer." The customer's account in the bank's ledger is the same account, in reverse form, and is, in effect, headed "The customer in account current with the bank." If there is reason to believe that there are any cash or bank transactions between customer and bank which, for any reason, have not been entered in the customer's cash book, these transactions would appear in the customer's account in the bank's books. Such transactions may have an important bearing on litigation, and the customer may therefore be compelled to disclose them if his opponent desires it. The banker for such purpose is really viewed as the agent for the customer, who keeps one of the customers' most intimate accounts. Again, in the far too numerous cases where a trader does not keep a complete or adequate set of accounts, access to the bank's books is necessary to disclose what the trader's cash book would have been if he had written it up properly. It is for these reasons that a banker may be compelled to produce his accounts in evidence in an action at law to which he is not a party.

When a banker is a party to an action, he is in the same position as any other party, and, according to the ordinary provisions of our code of civil Court procedure, may be required to allow access to his books during preparation for the case, and to produce the books if required at the hearing.



When, however, information contained in the bank's books is required to be made available for the purposes of litigation between two parties other than the bank, it is provided by Section 19 of "The Banking Act, 1908," that a duly certified copy of any entry in the bank's books shall be receivable as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded. That copy must be examined with the original entry by some bank officer who must by affidavit attest its accuracy as a copy. The evidence of the copy will then be received after it is proved that the book was at the time of making the entry one of the ordinary books of the bank, that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. It is usual for an officer of the bank to attend as a witness to give formal proof on these points. If convenient, and as an alternative method of proving the accuracy of the copy, this witness may depose orally to that fact and obviate the necessity of preparation and swearing of an affidavit. This provision for the admissibility of a "copy" as evidence is based on a recognition of the inconvenience that would be caused if a bank could be required, as of right, to produce its books in Court to assist in litigation in which it is not a party.

Circumstances may however arise in which the copy, although admitted as *prima facie* evidence, is not acceptable; it may be challenged by a party who desires the production of the actual book, and the evidence of an officer of the bank who can depose as to the actual transaction. The bank cannot, however, be compelled to produce its book, or make an officer available as a witness for such purpose, in any action in which it is not a party, unless by order of a Judge made for special cause.

Where inspection of a bank's books is required prior to hearing, application must be made to the Court or a Judge for an order that the party requiring inspection be at liberty to inspect and take copies of entries in the books of the bank for any of the purposes of the action. The order of the

Court or Judge is to be served on the bank three clear days before it is to be obeyed; the Judge or Court may, where it appears necessary and proper, vary this period.

The account which intending litigants seek power to inspect under these provisions should be the account of one of the parties. It was held in the New Zealand case, *James v. Mabin* (1929) N.Z.L.R. 899, that an order to inspect the books of a bank relating to the account of a person not a party to the litigation will seldom or never be granted except where such account is, in form or substance, really the account of a party to the litigation, or is kept on his behalf, so that entries in it would be evidence against him at the trial. In this case the account sought to be examined was that of a third party, i.e., of one who was no party to the litigation, and the order to inspect was refused.

#### **(k) Right of Auditor-General to Inspect Private Accounts.**

The Controller and Auditor-General of the Dominion is authorised by certain statutes to inspect the accounts of private persons in the books of the banks. This right of inspection is not affected or controlled in any way by the foregoing provisions as to the availability of the bank's records to litigants. If the Controller and Auditor-General declares that he has reason to believe, and does believe, that money, the property of His Majesty or of the Government of New Zealand, or of any public body whose accounts he is by law required to audit, has been fraudulently or wrongfully paid into the private account of any private person in any bank, he is entitled to inspect the account of such person with such bank.

#### **(l) Bank Holidays.**

The question of bank holidays is also legislated for by Sections 23, 24 and 25 of "The Banking Act, 1908."

Section 23 provides that the several days mentioned in the Third Schedule of the Act shall be kept as close holidays in all banks in New Zealand. When any such day falls on

a Sunday, the next day which is not itself a bank holiday shall be observed in lieu of such Sunday. The days enumerated in the Third Schedule which are thus made statutory Bank Holidays in New Zealand, are New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day, the Sovereign's Birthday, Dominion Day, Labour Day, St. Patrick's Day, St. George's Day, St. Andrew's Day and Anzac Day. In addition to these prescribed days, provision is made for special bank holidays. These may be appointed by the Chief Officer of each bank in New Zealand by writing under his hand, with the previous written consent of the Minister of Finance. Such officer may thus appoint any day or portion of a day as a special bank holiday at the bank under his control. Such bank holiday may be general throughout the Dominion or may be observed locally only, in specified places. Such special holidays must be fully advertised by newspaper advertisements and by notices displayed on the bank premises, and it shall not be lawful to appoint more than two consecutive days as holidays or more than three consecutive days as part holidays under the provisions now being considered. When a day is declared to be a part holiday for a bank, bills due on that day shall be payable within the business hours during which the bank is open.

The foregoing provisions are made for public protection and convenience. The banks may be closed only on such days as have been prescribed by the statute, or in accordance with the conditions laid down by the statute. These provisions are necessary because the closing of the banks involves hardship and risk of loss on the trading community.

A further provision in relation to bank holidays is contained in Section 25, and it is designed for the protection of the staff, being akin to certain provisions of the Shops and Offices Act. It is provided that no employee of a bank shall be employed during any part of a bank holiday or special bank holiday except for the purpose of dealing with correspondence and urgent matters of the day, and this provision

is associated with a penalty for its breach. A concession is made however to the necessities of the bank's business during the period of seven days immediately preceding or following the bank's half-yearly balance day.

**(m) Disposal of Bank Documents.**

It is the custom in New Zealand for a bank to hold, as vouchers for its entries, all cheques, bills and drafts drawn on it by its customers, although by special arrangement the banks will follow the English custom of returning these documents to the customer periodically after the statement of account has been rendered and accepted.

Section 26 of "The Banking Act" provides for the ultimate disposal of these instruments. They are all cancelled as they are paid and filed away according to some convenient system so that they may be referred to when required. A year's accumulation of such instruments is a bulky parcel, and convenience demands their periodic destruction. The Act therefore provides that all such instruments may be destroyed by the bank after the expiration of ten years from the date of the instrument if it is payable on demand, or from its due date in the case of all other documents. It is provided, however, that no such documents shall be destroyed under the authority of this section at any time after a demand for the delivery of such document has been made to the bank by the person entitled thereto.

**(n) Bank Notes.**

Sections 8, 9 and 10 of "The Banking Act, 1908," deal with the question of bank notes. Ordinarily, a summary of these provisions and of the relevant provisions of "The Amendment Act of 1914," "The Finance Act, 1916," and of various Orders in Council would be given here. The whole question of note issue is, however, dealt with in another part of this work and the publication of this book will take place

a little later than the beginning of the note issue of "The Reserve Bank of New Zealand."

The statutory provisions referred to will therefore be of historical interest only, and it is not thought necessary to deal with them here.

#### **(o) Bankers and Bills of Exchange.**

A certain part of "The Bills of Exchange Act, 1908," contains specific reference to and provisions for the business of banking, particularly in relation to cheques. These provisions are exhaustively dealt with in Chapter VIII, where the banker's duties and rights, particularly in relation to cheque transactions, are dealt with in detail.

### **(2) The Financial Constitution of Banks.**

#### **(a) General.**

The word "constitution" used in the above sense means, according to the dictionary "the body of fundamental principles governing an institution." As applied to an individual it means the "health or strength" of such individual. We might perhaps combine the two meanings in the statement that the health and strength of banking institutions are dependent on the fundamental principles by which they are governed.

Hence, under the heading of this section we must examine the principles by which alone a banking institution can be built on a foundation of health and strength sufficient to enable it, through good times and bad, to meet the demands upon it, and to so create confidence in itself that it becomes a sure refuge to its depositors, a source of assistance to its borrowing customers, and a strength to the community in which it has its being.

#### **(b) Capital and Reserves.**

The primary foundation of a bank's financial strength is its share capital and reserves, plus its uncalled capital—

and any reserve liability the shares may be subject to. For instance, the Union Bank of Australia Ltd. has a paid-up capital of £4,000,000 and a Reserve Fund of £4,850,000, but in addition, its depositors are protected by an uncalled capital of £8,000,000 and a reserve liability of shareholders (in event of liquidation) of a further £8,000,000. In other words £24,850,000 of the bank's assets must be lost before any loss can fall on depositors or note holders.

All the banks trading in New Zealand have ample capital and reserves, and in the case of four of them, there is a reserve liability of shareholders as well. There is, therefore, very ample protection to their depositors, and no sense of insecurity can arise in this direction.

Those who read Chapter X, which deals with the "Balance Sheet of a Bank", will gain a clear indication of the soundness of the banking system of New Zealand and Australia.

It may be stated that the primary function of a trading bank is the marshalling of, and making available for general use, the unmarshalled credits and other forms of wealth held widely by the various members of a community. It is therefore essential that sufficient confidence be created to induce the people to entrust their surplus wealth to the bank, either as share capital or in the form of deposits. Once such surplus wealth is marshalled it becomes available to those who are considered by the bank to be able to use it wisely and safely. It is obvious that a million pounds lying in money-boxes or other non-lucrative forms of private saving can perform a better service if entrusted to the care of a bank. Apart from the benefit to the depositor by the care taken of his money and the possible receipt by him of interest thereon, the bank, by lending the money, can direct it into useful and productive channels to the benefit of the community as a whole.

Therefore the reputation and strength of a bank must be built up on the financial ability displayed by its directors in the investment of its capital and its depositors' funds.

**(c) Investment of Funds.**

The chief outlet for a bank's funds is in the form of loans and advances to its customers. In New Zealand and Australia the practice is to lend on current account. A limit of overdraft is fixed, but interest is charged on the daily balance only. It is not usual to lend on fixed mortgage, and all overdrafts are repayable on demand. In practice, however, a certain proportion of a bank's advances is in the nature of mortgage business, and in recent years, particularly, it is probable that the term "repayable on demand" as applied to many advances, especially loans to farmers, is merely a polite fiction.

This brings us to the question of the extent to which it is advisable for a bank to lend on overdraft its available funds, which are chiefly obtained from deposits either repayable on demand, or at various periods not exceeding two years. The question is an important one, as advances to customers would not be readily recallable on demand in a case of emergency. The position of depositors is, however, usually fully safeguarded by the amount of investments in gilt-edged securities held by the banks apart from the amount advanced to their customers. The examination of any of the balance sheets of the banks trading in New Zealand will usually satisfy the enquirer that ample investments, other than loans on overdraft, are held to meet any likely demands by depositors. In other words the banks hold plenty of liquid assets to meet possible demands. For instance, the balance sheet of the Bank of New Zealand at 31st March, 1934, shows a total of over £34,000,000 as held on account of depositors, whilst the overdrafts are under £22,000,000. At the same time other assets include nearly £30,000,000 of liquid assets in New Zealand, London and Australia, of which about one half appears to be in the form of securities of the Governments of the three countries. The position, is, of course, not normal at the time of writing (August, 1934) as deposits at March, 1934 were above, and

advances were below, the average of past years and the position has not since improved, but the figures clearly indicate that the bank can meet any possible demands made by its depositors without unduly harassing its borrowing customers. The same remarks apply more or less to all the trading banks in New Zealand.

It will be seen from the above, therefore, that a bank must keep a considerable proportion of its assets in the form of the most liquid of gilt-edged securities, so that its ability to meet any contingency is unquestionable.

**(d) Liquid Assets.**

The most "liquid" asset a bank can hold is, of course, gold coin or gold bullion. Until the more recent development of the Central Bank movement, which is to some extent the outcome of post-war international war debt and trade difficulties, every bank considered it essential to its solidity to have a substantial holding of gold coin. In New Zealand, indeed, it was compulsory for the note issuing banks to hold a certain proportion of gold to support their liability on account of notes. But the advent of the Reserve Bank of New Zealand which has now taken over the control of, and right to issue, notes in New Zealand, and at the same time has taken over the gold of the trading banks, eliminates gold as one of the liquid assets of New Zealand's trading banks.

**(e) The Trading Banks; The Reserve Bank and the Gold Holdings.**

Probably the most controversial feature preceding the creation of the Reserve Bank was the provision in its incorporating and enabling Act, compelling the trading banks to hand over their gold holdings to the Reserve Bank in return for Reserve Bank notes. We set out below the respective views of the Bankers and the Government. The Legislature adopted the views of the Government and embodied them in an effective enactment, providing for the transfer at face value of all gold coin held by the banks. That provision appears in Section 15 of the Reserve Bank Act in the following words: "..... every bank carrying on business in



New Zealand shall transfer to the Reserve Bank in exchange for the equivalent value of bank notes of the Reserve Bank, or for credit with that bank, all gold coin or bullion then held by it on its own account . . . . . the equivalent value of gold coin in bank notes shall be the nominal value of such coin and the equivalent value of gold bullion in bank notes shall be an amount computed at the price of three pounds seventeen shillings and ten pence half-penny an ounce of the standard gold content . . . . .”

The point of the controversy was whether the banks or the State should receive the benefit of the appreciation in the value of gold, which had become apparent and realisable since the commencement of the 1930/1934 financial and economic crisis. We propose to set out in juxtaposition the views, pro and con, of the principles underlying the above enactment.

**(f) The Bankers' Views.**

The views of the banks, the owners, up to the date of the compulsory conversion of the gold may be summarised thus:—

The bulk of the gold had been imported from England by the banks at their own expense and was held to cover their note issue, not only to the extent required by statutory enactment, but much beyond those requirements. The banks considered the gold was their own property and one of the foundations of their strength. They considered they should be allowed at any time to export any surplus gold, beyond the statutory requirements for note issuing purposes, and were unquestionably entitled to any profit arising from the sale of such gold in London or elsewhere. As a sovereign in 1934 was worth about 35/- in the world's markets, the banks objected to receiving for each of their sovereigns a Reserve Bank note which as a result of the depreciation of our currency, in opposition to banking opinion, was valued in the world's market at 15/-, and probably less. They were

willing, though reluctantly, to accept "sterling" on the ground that a sovereign should be considered "sterling" if any coin can be so termed. It was also held by bankers that the proposal that the State should receive as revenue the profit on the sale of the gold was wrong in principle. It was further considered that the proposals were a weakening of the whole credit structure of New Zealand.

In the first bill brought before Parliament the banks' claims were recognised to the extent that the question of the profit on the gold was to be referred to arbitration with the Chief Justice as umpire, but the later bill omitted this provision, and the banks were given no option but to hand over their gold in return for Reserve Bank notes.

**(g) The Government Views.**

On the other hand, the Government point of view as set out by the Minister of Finance in a pamphlet published by the Government Printer ("Reserve Bank and the Gold Question") may be summarised as follows:—

"The gold reserves of the trading banks are to be transferred to the Reserve Bank; that is a fundamental principle which is not questioned or disputed. Nor need there be any controversy over the technical ownership of the gold. No one can suggest, however, that the banks' ownership is absolute and unrestricted—it is conditioned not only by the banking legislation of this country, but also by accepted currency principles the world over."

"The Reserve Bank Act provides that the banks shall be paid £3/17/10½d. per standard ounce for the gold to be transferred to the Reserve Bank. (Note: Coin was transferred at its face value—i.e., £1 for each sovereign.—Authors). This is the book value—the price the banks gave for it. They will lose nothing. Any profit that may in the future be derived from the sale of gold will be credited to the Public Account—that is, the profits will accrue to the people—not to the Reserve Bank. It is this section of the Act which has caused the trading banks to

protest. They consider that any profit on the sale of gold should not belong to the State nor to the Reserve Bank, but to themselves."

"The banks obtain their charters by legislation, they acquire their gold because of legislation, they held this gold as a backing for the notes because of legislation; the people were prevented by legislative enactment from claiming a sovereign for their bank note; and by legislation also the people were prevented from exporting gold and silver coin from this country. Legislation now proposes that the community shall resume its rights. It surely must be abundantly clear that the whole position is, and always has been, governed by legislation; and no exception can now be taken on the score of alleged legislative 'interference.'"

"It should be remembered that the only thing that now prevents the several members of the general public from claiming each a share of the gold, until the supply is exhausted, is the Proclamation (issued and maintained by the Government) which allows the banks to meet demands on them in notes instead of in gold. If that proclamation were lifted it may be assumed that every holder of bank notes would forthwith convert them into gold, and that every owner of credit with a bank would claim gold in satisfaction of that credit. If this course were followed, the banks would be forced to exchange their gold for their own bank notes or the equivalent of their own bank notes. The objections to allowing such a thing to happen are obvious, but if it were allowed to happen, it could not be called illegal, unethical, or immoral, but only unwise."

"But it would be open for the Government to promote legislation making Treasury notes (for example) legal tender, just as it has already promoted the legislation to make bank notes legal tender. The Government through the issue of Treasury notes could collect all bank notes into its own hands, and, then, after lifting the present

Proclamation, could demand gold in return for such notes. No moral exception could be taken to such a course, though the result would be the same as is contemplated by the Act—namely, that the State, as the representative of all interests and of all the people, shall become possessed of the profits arising from the sale of the gold.”

“ During the discussion on the transfer of gold I stated that if any new facts were brought to light which proved that the banks were being subjected to unjust treatment the Government would be prepared to reopen the question. No new facts have been adduced.”

We content ourselves by placing the pros and cons of this matter on record together with a statement of the views of the banks and of the Government. Which viewpoint is the correct one is thus left to the judgment of our readers and posterity.

For further study of the financial constitution of the trading banks of New Zealand we refer the reader to the chapter dealing with the Balance Sheets of Banks.

### **(3) The Right of Note Issue in New Zealand.**

#### **(a) General.**

Until 1st August, 1934, the right of note issue was vested in the trading banks and governed by very carefully prescribed conditions imposed by various statutes of the New Zealand Parliament.

On the date mentioned, however, the right hitherto existing was determined, the Reserve Bank of New Zealand assuming the right of note issue as its sole prerogative. For the basis and character of the note issue of the Reserve Bank, see the chapter dealing with that institution.

#### **(b) The Pre-War Period.**

The position prior to the Great War was that the six banks doing business in New Zealand were authorised to issue notes payable in gold to bearer up to the following limit:

the total for each bank was not to exceed the coin, bullion and public securities held by the bank in New Zealand, and of these three assets the coin was to be not less than one-third of the total. This provision was made in the Charter or Incorporating Act of each bank. See, for example, the National Bank of New Zealand Ltd. Act of 1873, Section 6, or the Commercial Bank of Australia Ltd. Act of 1913, Section 3. These notes were made a first charge on all the property of the banks in New Zealand.

**(c) The War Period.**

After the outbreak of the war, there was passed the Banking Act, Amendment Act of 1914. This gave the Governor-General power to issue a proclamation making bank notes legal tender, with certain safeguards designed to ensure a demonstration of the complete solvency of each bank issuing notes. By the same Act, the notes were in effect guaranteed by the Treasury of the Dominion, and the exportation of gold was prohibited except with the consent of the Minister of Finance. There followed on the 5th August a proclamation making notes legal tender in terms of the above Act. See the *Government Gazette* of 5th August, 1914, page 3043. The effect of this proclamation has been extended from time to time, and it is still in force, October, 1934.

The next step was the enactment of Section 44 of the Finance Act of 1916. This gave power to the Governor in Council by proclamation to suspend, or vary the restrictions on and limitations of the issue of bank notes, and to alter the amount and nature of the reserve of specified assets required to be held against notes. By a proclamation in the *Gazette* of 21st August, 1916, at page 2807, this power was used for the first time. The limit of the note issue was made an amount equal to the total of all coin, bullion and "public securities" in New Zealand, with the addition of "public securities" held by the banks in the United Kingdom, if such overseas securities were pledged to the Crown

to secure the New Zealand Treasury against its liability as guarantor. The effect of this provision is obvious. If under the guarantee, the Treasury had had to pay any bank's notes, it could have had recourse to this security, and in so far as they were New Zealand public securities the Government would have been merely reducing its own liabilities to the bondholders. In so far as they were securities of other Governments the credit of those governments was a backing for the note issue. By a defining clause, Regulation 6, the term "public security" was defined to mean the public securities of the Government of New Zealand, or of the United Kingdom, or of the Commonwealth of Australia, or of any State of that Commonwealth.

Then there followed the Finance Act of 1917, Section 66, which gave the Governor in Council power to add approved securities, other than public securities, to the assets which provided the measure of the right to issue notes. This power was exercised by proclamation in the *Gazette* of 13th December, 1917, at page 4495. The limit of the note issue was extended by adding "war loan advances" as approved securities prescribed to cover the note issue. "War loan advances" were defined as meaning "moneys lent by a bank on security to enable the borrower to subscribe to the War Purposes Loan." Note, again, how existing recorded wealth was required to be made available before the right to issue notes could be exercised. There had to be a bank customer, willing to subscribe to the war loan, possessing wealth in the form of a satisfactory security, i.e., War Loan scrip, to be pledged to the bank, before the above described provision became operative.

#### **(d) The Post-War Period.**

Next there followed the Finance Act of 1920, Sections 23 and 24. This enactment gave the Minister of Finance power to guarantee advances made by the banks to primary producers on the security of their unsold products. Here again, we have finance arranged against existing liquid

assets to be reimbursed by the proceeds of those assets when sold.

The next step was a proclamation in the *Gazette* of 25th November, 1920, of an extension of the definition of "War loan advances," making it include moneys lent by the bank to its customers on security to enable the borrower to subscribe to the Discharged Soldiers' Settlement Loans under the Act of 1920. This, it will be seen, extends the limit of the note issue as fixed by the *Gazette* notice of the 13th December, 1917; and again it must be noticed that the notes can be issued only if required following a transaction involving an issue by the bank of a loan against a sufficient specific security.

Finally, by a *Gazette* notice of the 16th December, 1920, page 2367 the limit of the note issue was extended by adding to the approved securities prescribed to cover the note issue "all wool advances made by the banks," and "wool advances" was defined to mean advances against specific parcels of unsold New Zealand wool.

Two facts stand out strongly in a study of the history of these enactments and their effect and their use by the banks.

The first is that the banks never found it necessary to use the authority given to materially increase the note issue. Whatever economic and financial difficulties there may have been in New Zealand during this period, shortage of currency (using the term in the sense of the media of exchange and the settlement of transactions) was not one of them. Then, as now, our currency methods of settling 85 per cent. of our transactions by cheque and the remainder by notes and coin, were sufficient to facilitate all transactions involving the transfer of existing wealth in any form.

Secondly, the fact should be noted that, throughout, the power to issue notes was covered in every case by a backing of actual wealth in the form of existing tangible assets, or of existing recorded credits in the books of the banks. If

any bank had, in exercise of the power given to it, printed one million new notes, it could never have been called upon to issue one of those notes except for a settlement between it and its customer, which involved the drawing of a cheque on the bank by the customer for the purpose of effecting a transfer of his recorded wealth, from himself, to the Government, or to some other citizen.

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## CHAPTER V.

## FUNCTIONS OF BANKS.

## (1) Banker and Customer.

(a) **Introductory.**

Most of the functions of a trading bank in New Zealand are exercised by the bank in transactions with its customers. It is necessary, therefore, as a preliminary to the study of the functions of banks, that we should consider and state the precise relationship between banker and customer.

There are at least three legal relationships, any one of which might, at the beginning of our study, be considered properly applicable to banker and customer. They are the relationships of trustee and beneficiary, of principal and agent, and of debtor and creditor. Each of these relationships has certain peculiar incidents, and it is therefore important that we should correctly classify the mutual standing of banker and customer.

The matter has been judicially considered and determined, and it can be stated authoritatively that the relationship between banker and customer is ordinarily that of debtor and creditor. It is true that in certain transactions between a banker and his customer the banker may be an agent, and therefore in relation to such a transaction the law of agency would be applicable. It is also true that a transaction may take place occasionally between the banker and his customer in which the banker is a trustee, and it follows that into that transaction incidents of the law of trustee and beneficiary must be imported. Nevertheless, as to an overwhelming majority of the transactions, our main statement is true, namely, that the relationship is that of debtor and creditor.

(b) **Incidents of Relationship of Debtor and Creditor.**

The fact that banker and customer stand in the relationship of debtor and creditor to each other (or creditor and

debtor where the account is overdrawn) lets in the following incidents of the law of debtor and creditor:—The customer's balance in the bank's (his debtor's) books is a debt capable of being attached by process of law. If, in legal proceedings, a judgment should be given against the customer, and the judgment creditor seeking to recover the amount of his judgment by process of law should desire to attach debts due to the customer, he may, by the appropriate proceedings, attach the debt due by the banker to the customer. If a customer should be adjudicated bankrupt, it is the duty of the Official Assignee to get in all the assets, including debts, due to the bankrupt. This term includes the bankrupt's bank balance, a debt which, by the Bankruptcy Act, is vested in the Official Assignee. Furthermore, in the last analysis, the right of a creditor in the indebtedness of his debtor is a right of action, and, subject to some special modifications we shall refer to below, this is the right of the customer (the creditor) against the banker (the debtor).

When a customer dies, the balance standing to his credit in the bank's books is a debt and will pass under a provision in his will bequeathing the testator's debts or moneys due to him. As between banker and customer the right to deal with the bank balance after the death of the customer rests with the personal representative, that is the executor or administrator, as the case may be, of the deceased.

Finally, a bank balance is capable of being assigned by a proper instrument of assignment, just as any other personal debt may.

One general feature of the relationship between debtor and creditor is that it is the duty of the debtor to seek out his creditor and pay his debt. It is not the duty of the creditor to seek the debtor and recover it, and, as a general rule, no demand by the creditor is necessary. If the debtor does not perform his duty by seeking out the creditor to pay his debt as and when it is due, the creditor may, without notice, exercise his right of action. This is not so, however, in the case of banker and customer, for the general rule has

been modified by a long and world-wide custom which has been recognised by the Courts. It is part of the contract between the banker and his customer that the banker is not called upon to repay the debt until payment is demanded by the customer.

**(c) Contract between Banker and Customer.**

We are fortunate in having very clear judicial guidance on this present subject matter. In *Joachim v. The Swiss Banking Corporation* (1921) 3 K.B., the English Court of Appeal found it necessary to define the exact relationship between banker and customer. One of the learned Judges, Atkin J., in his judgment, at page 127, dealt with the matter with a fair amount of attention to detail. We take the following extract from his judgment:—

“I think that there is only one contract between the bank and its customer. The terms of that contract involve obligations on both sides and require careful statement. They appear upon consideration to include the following provisions. The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due, against the written order of the customer addressed to the bank at the branch, and, as such written order may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer, on his part, undertakes to exercise reasonable care in executing his written orders, so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until

he demands payment from the bank at the branch at which the current account is kept."

**(d) Banker's Right to Close Customer's Account.**

A banker is not compelled against his will to continue the relationship of banker and customer, involving as it does the duty of honouring cheques drawn on him by the customer. He may give notice terminating the relationship, but he must be reasonable in the matter. The term of notice must be of reasonable length, taking all circumstances into account, and must be sufficient to allow the customer to make arrangements for outstanding cheques. *Prosperity Ltd. v. Lloyds Bank Ltd.* (1923) 39 T.L.R., 372.

**(e) Is a Cheque Necessary for Withdrawal of Balance?**

The question of whether or not the customer of a bank may require repayment of the balance of his current account without signing a cheque therefor, has been discussed by the Judges in several cases. In no case has it been directly in point, and the statements in the judgments are therefore merely *obiter dicta*. It seems, however, to have been generally accepted that the drawing and presentation of a cheque is not necessary, but that the demand for repayment of the debt due might be made orally across the counter. The bank would, of course, like any other creditor settling its indebtedness, require a proper receipt or quittance, but that is another matter.

It would seem clear, on principle, that the relationship being that of debtor and creditor, the creditor may orally demand payment of the balance due to him, and the debtor should accede to that demand, being entitled to no more than a proper receipt or quittance. Although, as we have pointed out, the question has not been expressly settled by judicial pronouncement, the above view is clearly deducible from the facts in *Midland Bank Ltd. v. Inland Revenue Commissioners* (1927) 2 K.B., 465. The facts in that case disclose that the Midland Bank Ltd. had inaugurated a scheme for payment

of cash over the counter in exchange for signed receipt forms. The point before the Court was whether or not these signed receipt forms should, for stamp duty purposes, be deemed to be cheques, and the Court held that they were for such purposes to be so considered. It is quite clear, however, that the receipts were not cheques within the definition of the Bills of Exchange Act. Nevertheless, the validity of the system of payment of cash over the counter on the surrender of these receipts, was tacitly assumed on both sides and was not questioned by the Court. This may be taken as lending weight to our proposition that the signing and presentation of a cheque is not essential to the withdrawal and payment of a customer's balance on current account.

**(f) Fiduciary Accounts in General.**

The great majority of the banker's customers are persons who own and operate current accounts in their own names, but there are many accounts in which the persons operating on the account are agents or trustees for other persons who are beneficially interested in the balance standing to the credit of the account from time to time. Thus, bank accounts are commonly opened and operated on by executors, by trustees, by the officers and agents of limited liability companies, by partners on behalf of the partnership as a whole; in all such cases special considerations arise, and the bank has to exercise care at two points. Firstly, it must ensure that it deals with and, particularly, pays out to the order of, those persons who have proper authority to operate on the funds, and no other persons. In the second place, the bank must be careful to see that it is not put into the position of being responsible for the proper application of the funds when drawn out by persons who stand in a fiduciary relation to the proprietor of the funds.

The first point is met by requiring, on the opening of the account and on any change in the personnel of the persons authorised to operate on the account, a proper written instrument of authority. The form and nature of these instruments

will claim our attention later on. The second point is met by exercising care in the form in which the account is opened so as to avoid such notice of the nature and incidents of the trust as would fix the bank with the responsibility for seeing that the trust funds were applied only consistently with the terms of the trust. This will receive our attention in more detail when we deal with the accounts of trustees.

We shall now examine some specific instances of these fiduciary accounts:—

**(g) Accounts of Companies and other Corporations.**

In considering the relationship of the banker to a customer of this class, it is necessary to refer briefly to the nature of a corporation. A corporation might be described as an artificial person created by legal fiction. That fiction consists in attributing a legal entity or existence to a number of persons, banded together for some common object. In other words, the law, for certain purposes, clothes these persons about with a legal body and attributes to that body a corporate existence distinct from the existence of all or any of those persons. Fifty men may join together for the purpose of acquiring a piece of land, adapting it for use as golf links by making the necessary improvements, and playing thereon for their mutual benefit and enjoyment the game of golf. These persons are simply a combination of fifty persons who will be jointly liable on contracts entered into by them or on their behalf. No new legal body or entity has been called into existence. The position simply is that contracts entered into on behalf of these men have the burden of their obligations and the benefit of their rights spread over the fifty persons. If, however, these men take advantage of one or other of the prescribed legal formulae and procedures, and form a company to own and run the golf links, there is thereby brought into being, in the eyes of the law, a fifty-first person who is quite distinct in being and in contractual rights from any or all of the fifty persons. The prescribed legal formula for the formation of a company invariably

includes a statement of the objects and powers of the corporation, and that corporation is incapable of doing or having anything outside the scope of the objects and powers therein defined. The commonest form of corporation is the limited liability company, incorporated according to the procedure set out in the Companies Act. The scheme of the company and an outline of its powers and objects must be set out in detail in its Memorandum of Association, and the rules and procedure according to which its governing members shall seek to exercise those powers and accomplish those objects are set out in an accompanying document known as the Articles of Association. The company so formed is incapable of following any objects not expressly or impliedly set out in the objects clauses of the Memorandum of Association, and in seeking to further those objects is not entitled to exercise any powers other than those expressly or impliedly described and defined in the Memorandum of Association. It is these considerations which make it necessary for a bank to exercise care when opening and operating an account for a limited liability company. It is necessary for the bank to know, firstly, what are the objects and powers of the company; in particular, has it power to open and operate a bank account? Has it power to deal in cheques and bills of exchange? Has it borrowing powers? And to what extent are these powers fettered or limited by conditions and restrictions? Secondly, by what agents or officials is the company to seek to exercise these powers, and what is the procedure according to which the powers are to be exercised? To satisfy itself on these points, the bank requires to see and study the provisions of the Memorandum and Articles of Association, and should require such letters of authority, such copies of resolutions of general meetings or directors' meetings, as are required reasonably to satisfy it that the provisions of Memorandum and Articles have been complied with. It may be added as a general statement that a trading company invariably has power to open and conduct a banking account. If the power is not expressly set out in the Memorandum of

Association, it would, in all ordinary circumstances, be incidental to such powers as are therein contained. The exception, it is submitted, could arise only in those cases where it was expressly provided that the company should not open a banking account, or where the opening and conduct of a banking account was clearly inconsistent with the defined powers and objects. A trading company has an implied power to borrow. The power to borrow is almost invariably expressly set out in the Memorandum of Association; if not, it is usually clearly implied as an incident of trading powers. In the case of a non-trading company, the banker should be always careful to see that the borrowing powers are included, and that they would reasonably include power to borrow from the bank by way of overdraft.

In the case *The Union Bank of Australia Ltd. v. South Canterbury Building and Investment Company Ltd.*, 13 N.Z.L.R., 13, this underlying principle is applied. The defendant company was a building society with the ordinary functions of such a society, and its Memorandum of Association did not include, either by express words or in any words from which the necessary implication could be taken, a power to borrow. The Articles of Association did, however, purport to contain a power for the directors to take deposits for varying terms at current rates of interest. It was held: (1) that the company had no general borrowing powers, and in particular no power to borrow by way of overdraft from a bank; (2) that its general features and objects, and its general financial and administrative scheme, were not such as to imply a power to borrow as incidental to the express powers and objects; (3) that the provision of the Articles referred to above, read in the light of the general financial scheme and objects of the company, were sufficient to give to the company a power to borrow in the precise manner provided for in the Articles in question, but gave no further borrowing powers. With this decision it may be useful to make a comparison with that in *Gibbs and West's case*, L.R. 10, Eq. 312. This company was incorporated by a Deed of



Settlement, which may be taken, for present purposes, as being equivalent to a Memorandum of Association. The Deed of Settlement contained no express power to borrow money, but empowered the directors to do and execute all acts, deeds, and things necessary for carrying on the concerns and business of the company, and to bind the company as if the same were done by the express consent of the whole body of members thereto. The company was formed to conduct general insurance business. It was held that the directors acted within their powers in borrowing money from the company's bankers to meet pressing demands upon the company, and that the decision in this case is merely an application of the principle that in the case of a trading company, that is, one which ordinarily undertakes buying, selling and trading, the powers expressly set out for carrying on that business necessarily imply a power to borrow.

When a banker does or seeks to do business with a company or other corporation, he should make it his business to acquaint himself with the statement of the company's objects and powers, and particularly with the limitations of its objects and powers. If the company is incorporated under the Companies Act, for instance, he should make a close study of its Memorandum and Articles of Association. If it is incorporated by a special Act of Parliament, he should devote his attention to the incorporating Act and to all rules and regulations thereunder. In those rare instances in which he might have dealings with a company incorporated under a Deed of Settlement or other private deed, he should give his attention to the Deed of Settlement and any regulations or by-laws made pursuant thereto. In his dealings with the company, he will be deemed to have notice of the contents of these documents, and will be deemed to have entered into transactions with the company in the light of, and with knowledge of, the contents of these documents and instruments. It is for this purpose that the law provides that the Memorandum and Articles of Association shall be placed on record in a public office where they are available to search

by all persons who are sufficiently interested to exercise that right.

It should be noted, however, that there is a difference between what might be called the declared or external objects and powers of the company, and the domestic or inward exercise of those powers. Whilst a banker or other person, therefore, is deemed to deal with a company with knowledge of the powers and objects outlined in the Memorandum of Association, and of the provisions of the Articles of Association regulating and limiting the exercise of those powers and objects, he is not bound to go behind the scenes to enquire as to whether or not the directors and administrative officers have acted lawfully and in full compliance with the regulations in their ordinary administrative acts. Thus, if, for instance, the Memorandum of Association should give the company power to borrow such sums for such purpose and on such security as should be approved by a resolution of three-fifths of the directors of the company, a bank manager is bound to take notice of that, and he would at his peril make an advance to the company on the unsupported application of, say, the managing director. The banker is bound to take notice of the fact that the power to borrow is exercisable only by the directors per medium of a resolution carried by the prescribed majority. If, however, the banker makes his enquiries and receives in the ordinary course such evidence as would usually be given that the regulations have been complied with, he cannot be expected to do more, and he may then safely act on such information and evidence. If, for instance, he receives a letter from the secretary of the company in his official capacity containing what purports to be a copy of a resolution of the directors bearing the seal of the company and signed by the managing director as chairman of the meeting and countersigned by the secretary, as secretary, he would be justified in acting upon it. A banker or other intending creditor is not entitled to or required to have a delegate at the meeting or behind the door to ascertain that the Articles have been complied with; it would be intoler-

able if he were required to do so. This principle is laid down in an English case, *Mahony v. East Holyford Mining Company* (1875) L.R. 7, H.L. 869, 33 L.T. 338, and this was followed in New Zealand in *Blair v. Duntroon Railway Company Limited*, 5 N.Z.L.R. (S.C.) 309.

Whilst the principle enunciated immediately above may be accepted as the correct statement of a general rule, it must be noted that if in any given case there were circumstances or conduct that should reasonably have put the bank on enquiry, or that seemed reasonably to indicate that the Articles or other regulations were not being followed, and that the company's interests were being sacrificed, and, *a fortiori*, if the circumstances involved *mala fides* or fraud on the company, attributable to the Bank, the banker could not claim the protection of that principle.

In *Mahony v. East Holyford Mining Company Ltd.*, referred to above, the facts were that cheques had been drawn on the company's account with the bank, in conformity with a letter of authority which had been given to the bank in the ordinary course of business under the signature of the secretary of the company, purporting to be a copy of a resolution passed by the directors. The bank acted upon this authorisation and over a long period had honoured cheques signed in accordance with it. It appeared later, when all the funds of the company had been dissipated, that there never had been a meeting of shareholders, nor any appointment of directors or of a secretary; but that the persons who had got up the company had treated themselves as directors and secretary and appropriated the money obtained from the subscriptions. It was held that, in these circumstances, the bank, which had acted *bona fide* all through, was justified in acting upon the authority given to it; that is, that it exercised ordinary care and precaution in enquiring into the records and external acts of the company, and could not be expected to enquire into the details of its domestic management.

**(h) Partnership Accounts.**

We propose to deal now with the position of a partnership or firm as a bank's customer. Most of the points of difficulty and interest that arise out of the position of a firm or partnership as a customer of a bank have relation to the authority of any one or more persons as agents for the firm, to act for and bind the firm. It is necessary, in all dealings that a bank has or seeks to have with a firm, that it should be clear beyond doubt that the firm is bound by the arrangement.

It is convenient, when following out such principles as those we are now dealing with, to use the term "firm" to indicate the members of the partnership as a whole, although, in English law, there is no recognition at all of the "firm" as a distinct entity or body. It is pointed out elsewhere in this chapter that this separate and distinct existence is one of the features of a corporation; a corporation or company is in law an entity quite distinct from any or all of the persons composing it; but the "firm" is not so recognised (except, by the way, in Scotland). According to our law, when a firm enters into a contract, the position is that those persons who compose the firm are joint contractors, and they are jointly liable on their contracts.

It follows from the foregoing that, when a firm is a customer of a bank, it is important that the bank should know exactly and fully who are the members of the firm. This is specially important for two reasons. One is that, in certain dealings, where the bank is endeavouring specifically to procure the participation in the dealing, or at least the consent, of all parties to the dealing, it should know with whom it has to communicate. The second is that, even in those dealings where it has trusted one partner to act on behalf of the firm, it should know who are the persons affected by the implied authority of that active partner. Our Law Reports contain more than one case in which a banker has been defendant in a suit, brought by a sleeping partner who has claimed that he has been prejudiced by

actions of the bank, which it has admittedly committed or done in ignorance of the fact that the plaintiff was a partner.

The extent of a partner's implied authority to act on behalf of the firm, together with the effect of that implied authority, is the subject of an express provision in our Partnership Act. Section 8 of "The Partnership Act, 1908," runs as follows:—

"Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way of business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner."

For present purposes this statutory provision has to be considered, firstly, in connection with the opening of an account on behalf of a firm, and, secondly, with transactions and dealings arising out of the opening of that account. It may be safely said as a general statement that, in these matters, the implied authority of a partner to bind his firm is always operative and available except where the bank has been expressly notified to the contrary. Partnership is defined as the relationship existing between persons who are carrying on a business in common with a view to profit, and the chain of reasoning might be adopted that no business can be carried on without monetary transactions; that the monetary transactions of a firm in business cannot well be conducted without the use of a bank account; and that the use of a bank account involves the drawing and issuing of cheques. It is well established that any partner of a trading firm may open a bank account in the name of the firm and draw cheques on that account, and that the banker is justified in opening that account and in honouring cheques so drawn unless he is

expressly advised to the contrary by the firm. It would seem, however, that this implied authority to operate on the bank account would not extend to the drawing of cheques in the case of a joint adventure that could not be termed a trading partnership. But where a partnership can be properly termed a trading firm, the drawing and acceptance and endorsement of all kinds of bills of exchange would in general terms be incidental to the carrying on in the usual way of the business of the firm, and therefore the partners' implied authority would extend to such transactions.

It is important to note, however, that the authority of a partner to open a bank account and operate on it on behalf of the firm is limited to cases where he opens the account in the firm's name. In the case *Alliance Bank Ltd. v. Kearsley*, the facts were that two brothers, James and William Kearsley, were partners, carrying on business in partnership at York and Manchester (England) as coachbuilders under the firm name of "Geo. Kearsley and Company." James managed the Manchester business, whilst William managed the business at York. James called on the Alliance Bank at Manchester and stated that he wished to open an account there for the firm's business at Manchester, informing the bank manager that he was the only resident partner in Manchester and that he alone would sign the cheques. The bank agreed with his suggestion that it would be better to open the account in his name, and it was opened accordingly and so conducted for about five years. At the end of that time, the account being overdrawn, the bank sought to recover the amount of its loan from the partner, William Kearsley, on the ground that he was a partner of the firm to whom the advances were made. It was held that the partner had no implied authority to bind his firm by a bank account opened in any name other than that of the firm, and, as no express authority had been given, the defendant, William Kearsley, was not liable.

Although in all ordinary cases it would seem clear that the opening and conduct of an account in the name of the firm is within the implied authority of a partner, it is only

common prudence for the bank in all cases to obtain a formal written letter of authorisation or mandate, and this is invariably done in New Zealand. This authority should disclose the names of the partners, nature of the business, and the firm-name in which the account is to be kept, with instructions as to the signature or signatures to be recognised by the bank; furthermore, it should contain definite instructions and authorities in the matter of borrowing powers and the granting of loans to the firm.

When the bank has been given express instructions as to the signatures to be recognised on the firm's cheques, it departs from those instructions at its peril, and cannot charge to the firm's account cheques which do not comply with the instructions. In the case *Twyebell v. London Suburban Bank* (1869) W.N. 127, the facts were that the plaintiff and his partner at the time of opening the account at the defendant bank, stipulated that no cheque should be honoured by the bank unless it was signed by one partner and bore the initials of the other partner. The bank having honoured cheques (in violation of these instructions), without bearing the confirming initials, it was held that they were liable to the plaintiff partner in respect of this breach of instructions.

In the case of a trading partnership, the borrowing of money on overdraft would be a transaction within the scope of the authority of any partner acting as agent for the firm, and, in the absence of special instructions establishing a contrary position, the bank could recover from all the partners. As already pointed out, however, it is usual for the bank to protect itself in this matter by express instructions to which it procures the signatures of all the partners. The implied authority of a partner as agent of his firm to do acts for the carrying on in the usual way of business of the kind carried on by the firm, does not extend to such acts as signing a submission to arbitration or a contract of guarantee, or a suretyship on behalf of the firm. These cannot be said to be within the scope of the usual way of business carried on by the firm. If, therefore, it is sought

to bind a firm by such contracts, it is necessary to obtain the signatures of all partners to the necessary documents.

Where the banker conducts at the same time a current account in the firm's name, and separate accounts in the names of one or more partners of the firm, he is not entitled to set off an indebtedness in any one of these accounts against any other or others of them in the absence of an express agreement giving him that right. He is not bound, in the absence of special circumstances, to enquire into such transactions as transfers from one of these accounts to another. He is not bound to be suspicious, or to act as a detective, and he is justified in assuming that men of good reputation are acting honestly. Where, however, there has been anything approaching a course of dealing in the way of transfers from a firm's account to the account of one of the partners, in circumstances that would have suggested enquiry to an ordinarily prudent business man, very slight evidence might be held sufficient to establish the liability of the bank for negligence if, from the facts of the case, it should have judged that some of these transactions were not honest. The same considerations apply to cheques obviously payable to a firm being passed to the credit of a partner's private account. (*Bevan v. The National Bank*; (1906) 23 T.L.R. 65.

It is provided by Subsection (b) of Section 23 of "The Bills of Exchange Act, 1908," that the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm, and this provision has seemed to be something in the way of a stumbling block to some banking students of the Act. The difficulty generally arises through reading too much into the provision. It should be noted, firstly, that it is not itself a direct and substantive provision, but merely a proviso to the substantive statement that no person is liable as drawer, endorser, or acceptor, of a bill unless he has signed it as such. The proviso is no more, apparently, than a declaration of the principle *qui facit per alium facit per se* (he who acts through another acts by himself) in relation to this



substantive provision. When Jones, in an ordinary transaction of the business of his firm Jones Brown & Robinson, accepts a bill in the firm's name, the firm is bound thereby; Jones and Brown and Robinson are liable as acceptors,—the signature by their agent Jones on their behalf being sufficient to make compliance with the rule that no person is liable as acceptor of a bill unless he has signed it as such.

**(i) Accounts of Trustees.**

Care should always be exercised by a banker in opening or conducting a current account where the customer is known to be a trustee and the moneys dealt with are trust funds.

This caution is necessary by reason of the fact that the banker may be held liable to account to the beneficiaries under the trust if, by his actions he assists in or facilitates misapplication of the trust funds with consequent loss to the beneficiaries. The banker's liability to reimburse the trust funds might be said, in general terms, to be proportioned to his knowledge of the trust, its existence, its nature, and the nature of the transactions and dealings with its funds. If the banker did not know that his customer was a trustee and therefore did not know that the moneys paid into his account were trust funds, he could not be liable even if it were fully proved that the customer was a trustee, that the lodgments to the account comprised trust funds and that the operations on the bank account were designed to misappropriate the trust funds.

The banker frequently is fixed with knowledge that a customer's account in his books is a trust account by a notification conveyed by the name or style of the account itself, as where, for instance an account is opened in the style of "Ernest William Fogg, Trust Account." If however, that is the full extent of what he knows, or reasonably should know, in respect of that account, his position is not appreciably affected. He is bound to honour his customer's cheques drawn on that account; he is not required to be suspicious, nor justified in requiring his customer, or the payees of his

customer's cheques, to justify each transaction. The customer may even draw cheques on this trust account and lodge them to the credit of his own private account, without having such operations questioned or obstructed by the banker. Such transactions are common in the conduct of the trust accounts of solicitors and public accountants where, on rendering periodical accounts to their clients, such practitioners draw on their trust accounts, firstly for their own proper reimbursement and remuneration, and secondly to remit the balance due to their clients. Nevertheless, the banker now has two items of knowledge which, whilst they might be of themselves quite ineffective to fasten liability on him, might give a serious colour to other facts in any given transaction, and help to render him liable to the beneficial owners of the trust funds.

A prudent banker will usually refuse to take a trust account in a style that discloses a specific trust, e.g., "Ernest William Fogg in trust for Thomas Dodd," or "Ernest William Fogg, trustee in estate of Thomas Dodd." If an account were accepted in that style there is added another ingredient in the knowledge of the banker concerning the account and its operations, viz., the precise nature of the trust and the identity of the beneficiaries. That tends correspondingly to increase the banker's knowledge; it decreases the apparent area of transactions concerning which the banker can claim that there was nothing that should reasonably put him on enquiry. It is for these reasons that bankers usually decline to accept accounts under such styles or headings.

If a banker should have any interest in a transaction on a customer's trust account, other than as paying banker, he will probably find his liability to the beneficiaries greatly increased thereby, if the transaction is, in fact, a fraud on the beneficiaries. Thus, if the trustee's private account were overdrawn, and after much pressure by the banker, who required a settlement, or a specified reduction, or a payment of interest, the trustee met his banker's wishes and demands by a cheque on his trust account, the bank would very

probably find itself unable to hold the proceeds of that transfer, as against the beneficiaries of the trust.

Other circumstances might appear, in the facts of any particular transaction, that would or should put any prudent man, in the banker's position, upon enquiry as to the correctness and honest nature of the dealing. In such case the banker should make all such reasonable enquiries as the circumstances fairly suggest, before, as banker, he facilitates the transfer of the trust funds. The test is; can it be said, applying the reasonable standards of prudent and honest business men, that the banker must have known, not merely suspected, that a breach of trust was being committed. To sum up therefore; if the banker knows, or reasonably should know that a breach of trust is being committed and he nevertheless pays the cheque, he is liable to refund to the beneficiaries; he is also so liable if such a transaction secures to him a benefit which he has designed or stipulated for. *Coleman v. The Bucks and Oxon Union Bank* (1897), 2 Ch. 243.

A banker ordinarily has a lien on any funds of the customer in his hands to cover a balance due on another account. He cannot however exercise this right over the balance of an account which he knows to be trust funds.

**(j) Accounts of Executors and Administrators.**

When a customer dies, his banker should allow no operations on the account until he is advised of the appointment by the Supreme Court of a personal representative of the deceased charged with the duty of administering the estate of the deceased. This personal representative is known as "the executor" when he has been nominated as such by the will of the deceased and the will has been admitted to probate by the Supreme Court. He is known as "the administrator" when there is no valid will. An executor is appointed by the Court to administer the estate in accordance with the terms of the will and his appointment is evidenced by a formal order of the Court known as "probate." An

administrator is appointed by the Court to administer the estate in accordance with the provisions of the Administration Act for the distribution of intestate estates and his appointment is evidenced by an order of the Court known as "letters of administration." Where there is a valid will admitted to probate by the Court, but no executor nominated or willing to act, the Court makes a grant of "letters of administration *cum testamento annexo*" (with the will annexed). In such case the administrator (although an administrator, not an executor) distributes the estate in accordance with the directions of the will, and not according to the table of distributions in the Administration Act.

In any of these cases the banker should do nothing until there has been produced to him, by the personal representative or his solicitor, a sealed copy of the probate or letters of administration as the case may be. It is then usual to require the executors or administrators to open a new account in their own names, closing the deceased's account by drawing on it a cheque for the balance signed by them as executors or administrators as the case may be. The fact that a sealed copy of the probate or letters of administration has been produced for the banker's perusal should be noted by a minute written at the head of the deceased's account.

Whilst, in the case of trustees, all join in signing cheques on the trust account, the bank may, in the absence of any special arrangement or instruction to the contrary, permit one of several executors or administrators to operate on any account opened by the deceased, or by the executors or administrators as such. The usual form of authority should be taken, signed by all, instructing and authorising the bank to permit operations on the account by bills and instruments signed in accordance with such instructions.

**(k) Infant as a Bank's Customer.**

An infant, in law, is one who has not attained his majority by reaching the age of twenty-one years. It is undesirable that a banker should accept an infant as his customer, for there

are some uncertain tracts in the law of infancy. In some respects the law is clear, and where it applies, it is mostly in the direction of restricting the infant's rights and placing the other party to transactions with him at a disadvantage. It seems to be settled that an infant's dealing with his banker on current account could not be impeached, and an infant, therefore, having placed money on current account with his banker, and drawn it out during his infancy, could not on coming of age repudiate it and require the banker to pay him again. It seems to be clear that an infant may lawfully settle an account by cheque, and he is bound by having done so, and it follows that a bank is justified in honouring the cheque of an infant without any danger of the infant repudiating the transaction.

An overdraft, however, should never be granted to an infant, for it is specially enacted that no action may be brought to recover money from an infant, and any security given to cover his overdraft would be void. In the case of *Nottingham Permanent Building Society v. Thurston* (1903) A.C. 6, it was held that although an infant might be a member of a building society, and might give all necessary acquittances to the society by virtue of a certain section of the Building Societies Act, he was not competent to execute a valid mortgage to secure advances made to him by the Society, and such a mortgage was absolutely void as against the infant.

Whilst an infant's cheque transactions are probably unimpeachable, he is not competent to be a party to a bill of exchange other than a cheque. This would be the case even though the bill of exchange related to a transaction for necessaries, on which the infant's contract would be good. The reason presumably is that the bill of exchange is a separate contract, of itself; and whatever may be said about the purchasing of food and clothes, it must be said that the giving of a bill of exchange is not a necessity for an infant.

We have spoken of the infant as an undesirable customer on current account, although one who could not repudiate his ordinary transactions in that department of banking. It

should be noted, however, that he is even more undesirable as a fixed depositor. Being an infant, his contract to leave his money for a given period would not be binding on him, and he could therefore recall it at will.

**(1) Account in Joint Names; Current Account or Fixed Deposit.**

An account is sometimes opened by more than one customer in the joint names of the depositors. Where this is done, and nothing is said or stipulated at the time of the lodgment or deposit, the rule is that the depositors are jointly entitled to the benefits of the account. *Prima facie* all transactions on the account should be verified by the signatures of all the joint depositors; if it is desired to give authority to fewer than the whole number of depositors, the required mandate or letter of authority should be signed by all.

It is an incident of joint ownership, where there is nothing expressly provided to the contrary, that on the death of one or more of the joint holders, the property and rights pass to the survivor or survivors. (*Downes and Another v. The Bank of New Zealand*, 13 N.Z.L.R. 723.

**(m) Customer having Two or More Accounts.**

Where a customer has more than one account at a bank, the bank is entitled to set off the balance of one account against the other, even though they should be kept at separate branches.

Even though one of these accounts should be styled a trust account, if in all the circumstances of the case the bank is not fixed with notice of any trust in relation to the funds in that account, it would be entitled to set off a credit balance in that account against a debit balance in another. See the report of the case *McMillan v. Bank of New Zealand* on page 409.

The bank is not bound to make this set-off and cannot be compelled to view the accounts retrospectively as having been set off. If, for instance, a customer should have an overdrawn account at one branch and a credit balance at the other, he

cannot, in the absence of an arrangement to that effect, require them to be set off for purposes of calculation of interest. The customer has it in his own hands at any time to transfer the credit balance by cheque to the overdrawn account, and thus save interest. If for his own convenience he keeps the two accounts separate, he cannot require the bank for his benefit in the matter of interest to view them as one account. The position is therefore that either party (banker or customer) may coalesce the accounts if he wishes, but until he does so they are separate accounts. See the detailed report of the case *National Bank of New Zealand Ltd. v. Grace*, at page 403, and *National Bank of New Zealand Ltd. v. Heslop*, at page 405.

**(n) Fixed Deposits, or Deposit Accounts.**

We now propose to consider deposit accounts as distinct from current accounts. In this Dominion the term commonly used and understood is "Fixed Deposits," and it is so used in contradistinction to the term free deposits or current accounts. In the English text-books the term used is "Deposit Accounts."

In this Dominion the practice is to receive fixed deposits for stated terms only; the practice does not, as in England, include deposits at call or on demand. The periods commonly agreed upon are three and six months, one year and two years, the banks of New Zealand acting in accordance with an agreement amongst themselves for uniformity in these terms.

The terms of the loan to the banker on fixed deposit are commonly set out in an instrument known as a Fixed Deposit Receipt, and in form it is merely an acknowledgment by the banker of having received the money, with a statement of the rate of interest and date fixed for repayment. The interest is, on a deposit up to twelve months, *prima facie* payable at the maturity of the deposit loan, but this again is purely a matter of arrangement, and on a deposit for twelve months the interest is paid half-yearly, if the customer desires it. Where

the deposit is for two years, it is not unusual to issue a form of receipt with detachable interest coupons attached thereto.

A fixed deposit is in its nature a loan to the banker; here again the relationship is that of debtor and creditor, not that of trustee and beneficiary, and in this connection reference is made to page 160, where the effects and implications of this relationship are dealt with.

The transaction is in the nature of a loan by the customer to the banker; it results in a debt; it may therefore be assigned as a whole under Section 46 of "The Property Law Act, 1908." A debt represented by a fixed deposit is subject to the banker's lien to secure any other debt due by the customer to the bank. Again, being a debt, it is liable to attachment at the instance of a judgment creditor of the depositor who seeks this form of execution against his judgment debtor's property.

The statement that the debt evidenced by a Fixed Deposit Receipt is attachable is put forward as a general rule, and it is applicable without doubt to the form of fixed deposit which is usually issued and accepted in New Zealand banking practice. It is possible however that the deposit receipt might be worded so as to prevent the debt from being attachable. The test is whether or not the debt is one "due or accruing due" to the customer. A debt is "due" when it is presently due and payable; it is "accruing due" when it is an existing obligation payable, however, in the future. The ordinary fixed deposit, which is, as stated above, merely an acknowledgment of the receipt of the money with a statement of the due date, would undoubtedly be a debt "accruing due," and would therefore be attachable by appropriate procedure through the Supreme Court or the Magistrate's Court in New Zealand. It would be possible, however, if the banks desired it, so to word the receipt as to prevent the debt from being attachable; as, for instance, by providing thereon that the deposit should be repayable only on the surrender of the receipt duly signed by the depositor. This imposes fulfilment of a condition between the present state of things and



the obligation to pay the debt. Such a condition would not, in practice, embarrass or increase the difficulties of the depositor in obtaining his money if he should unfortunately lose his receipt; it would, however, if it is submitted, prevent the debt banker to customer, from being attached by the judgment creditor of the customer.

A deposit receipt is not a negotiable instrument,—that is, it is not capable of passing from party to party by transfer giving to an honest transferee for value a good title notwithstanding possible defects in the titles of previous holders. It is, as we have said, assignable as a whole like any other debt, but it is not negotiable. The title of the assignee will depend on the validity and completeness of the instrument of transfer.

The English text-books refer to a form of deposit receipt issued by some banks with a cheque form printed on the back, and apparently when after maturity this cheque form is filled in and signed by the customer it operates as a cheque, but this practice is unknown in the Dominion and does not call for further comment.

The depositor is not entitled to draw a cheque against a fixed deposit, and in the absence of a special arrangement to that effect the bank is under no obligation to honour such a cheque. The customer has no right to demand a loan against the fixed deposit. As a rule, and in all normal times, the banker will grant an overdraft against a fixed deposit, but that is purely a matter of arrangement, and the customer cannot demand the privilege as a right.

As previously stated (page 180), a banker should not knowingly accept an infant as a fixed depositor, as he is not in law competent to give an effective discharge for the debt at the maturity of the deposit, nor is he necessarily competent to make the original contract of loan to the bank for a fixed period.

**(o) Overdrafts.**

This heading is, in reality, a subheading of the general heading Current Accounts. A current account may have a credit balance or a debit balance according to whether the lodgments exceed the withdrawals or *vice versa*. When the withdrawals exceed the lodgments, the account is said to be overdrawn; as that account appears in the banker's books it presents a debit balance because the bank's ledger is headed up "the customer in account with the bank."

A customer has no right to assume authority or permission to overdraw his account. It is a matter of arrangement with the bank, and an application for leave to overdraw is, in effect, an application for a loan. When it is granted and put into effect, it converts the bank's creditor into the bank's debtor. No customer could complain of this change in the relationship if brought about by the bank's honouring his cheques in excess of his lodgments, for, as a general rule, the drawing of a cheque for which provision has not been made by lodgment would involve an implied application for an advance by way of overdraft. This implied application should not, however, be relied on by the banker where cheques are drawn by an agent or other person with limited authority; otherwise the principal, the actual debtor, might have legitimate ground for complaint that he had been damnified by the bank's action, and he might successfully repudiate the obligations of a debtor. This matter should be, and in this Dominion invariably is, provided for by the careful form of mandate or letter of authority taken by the banks from a customer who wishes to authorise an agent to draw cheques on his account on his behalf.

An advance by way of loan is a very favourable form of loan for a business man, for he pays interest on his daily balance, and thus gets the benefit of the lodgments arising out of his ordinary business turnover. The usual arrangement for an overdraft takes the form of fixing a limit; thus, the banker may agree that the business man is free to overdraw up to £1,000. This means that that sum is available at any

time for the business man for his trading purposes, but at certain times in the month when he has lodged the ordinary seasonal receipts of his business, his account may be only a hundred pounds or so overdrawn, or even in credit temporarily, and the amount on which he is paying interest is reduced or extinguished accordingly. It is for this reason that a banker usually charges a somewhat higher rate of interest than that charged in the open market for fixed loans; a fact frequently lost sight of by critics of the methods and policy of our bankers. It is cheaper as a rule for the business man to borrow on overdraft from a banker at  $5\frac{1}{2}\%$  than to raise a fixed loan from a private lender at  $5\%$ . *Prima facie* there is no obligation on the customer to pay interest to the bank when the account has a debit balance, any more than there is for the banker to pay interest to the customer when he has a credit balance; and, still viewing the matter from the strict point of view of the common law, there is no obligation to pay interest unless it has been arranged for. We think it is beyond doubt, however, that the obligation to pay interest is an implied obligation in all overdraft loans from banks in this Dominion. The practice is so well established, so universal, and so widely known, that no person who knows enough of business to know how to procure a loan by way of overdraft could say that he did not know that he would be required to pay the current rate of interest on his loan. The banks usually charge interest calculated on the daily balance at half-yearly periods on the banks' half-yearly balance day, and the common practice is to debit this interest to the customer's current account on the banks' balance day. The effect of this is in theory to charge compound interest, and this action is often the subject of ignorant criticism of our banking methods and practices. In practice, compound interest is not charged. If an overdraft were a fixed loan of the nature of what a banker calls a dead account, that is, one without operations, and if the interest were debited half-yearly on the increasing debit balance, it would, of course, be compound interest, but only ignorance of banking methods

could assume such a practice. The banker does not seek or encourage fixed loans or dead accounts, and it is only in exceptional circumstances that he will permit or tolerate them. Where they are permitted, the banker invariably requires the borrower to pay his interest half-yearly as it is due, from his current revenue resources—a very sound proceeding. In the case of a business account, however, a proper “live” account suitable for loan by overdraft, the half-yearly debit for interest must be considered to be met by the first lodgments thereafter in the ordinary course of business.

The banker usually takes security to cover an advance by way of overdraft, and in this connection the reader is referred to the chapter on securities. It may be noted here, however, that even if he takes a mortgage of land drafted to cover the floating balance due on an overdrawn account, he does not thereby prejudice the relationship of customer and banker as debtor and creditor respectively on current account; in other words, these relationships are not lost or merged into the relationship of mortgagor and mortgagee respectively. (*National Bank of Australasia v. United Hand-in-Hand Company*, 4 A.C., 40).

It may be further noted that a series of transactions in the nature of drawing cheques on a current account until a credit balance is converted into a debit balance, involves a borrowing. We have already referred to this in the case of an over-drawing by an agent who signs cheques *per procuration* or by authority of his principal, the actual customer. The same considerations and contingencies must be kept in view in the case of a corporation. It may well be that a given corporation has an implied power to open a bank account and an implied power to draw cheques. After it has drawn fifty cheques there may still be a credit balance in its bank account; when it has drawn a second fifty cheques, it may have converted that credit balance into an overdraft. There is a sense in which, in drawing the second fifty cheques, the officers of the corporation did no more than they did in drawing the first fifty, —they were merely exercising in the company's name its

implied power to draw cheques. The position is, nevertheless, that they have exercised borrowing powers, and the corporation will be bound by the debt thus created only if it has power to borrow, and this must not be lost sight of. See the heading "Accounts of Companies and Other Corporations."

An overdraft should not be granted to a minor. To do so is lending money to a minor, and such a loan is not recoverable, and any security purported to be given by the minor would be void and unenforceable. (See page 180).

**(p) The Bank Pass-book.**

The pass-book issued by a banker to his customer is, in its nature, the current account statement, which is commonly known and used in business when a series of debit and credit entries are recorded between the parties in the form of a "running," or current account. By common consent and practice, as between customer and banker, it is the banker who prepares and renders this account. The object of the statement is to place in the customer's hands, periodically, or from time to time, the banker's version of the transactions between him and his customer, and his statement of the balance in the customer's account as at the date of rendering the statement.

The object of thus preparing the pass-book and delivering it to the customer, is that the customer may examine it, compare it with his own records, return it without comment if it is correct, whilst if it is incorrect, it is expected that the customer will point out to the banker the extent and the nature of the inaccuracy.

Unfortunately, as the law stands, this object cannot be said to be so recognised by banker and customer as to elevate it into the basis of a mutually accepted contract. The banker is not justified in assuming, when the pass-book is returned without comment, that the customer assents to all entries made therein and agrees that the balance therein set out is correct and binding on him. There is no legal duty, deducible from the legal relationship of banker and customer, and laid on the customer, to examine the pass-book when it is handed

to him by his banker, and the Courts have refused to infer a special contract or admission binding on the customer, by the fact that he has received his pass-book, retained it for a time, and then returned it without comment. They have taken cognizance of the facts that in a busy office with a large staff, the task of comparing the bank pass-book with the customer's books must frequently be entrusted to an employee and it may be that that employee is himself dishonest and has an interest in not calling attention to discrepancies. One learned Judge, in a judgment dealing "*inter alia*" with the implications of a pass-book returned without comment, said: "A hundred things may happen to prevent him (the customer) from looking into it when he has got it, and what right has the bank to infer that he has looked into it?"

Paget in his "*Law of Banking*" says:—"The present position of the pass-book is perhaps the most unsatisfactory thing in the whole region of English Banking law. Its proper function is to constitute a conclusive unquestionable, record of the transactions between banker and customer and it should be recognised as such. After full opportunity of examination has been afforded to the customer, all entries, at least to his debit, ought to be accepted as final, and not be liable to be subsequently re-opened, at any rate, not to the detriment of the banker. It would be dangerous, however, to assume that such is the present effect of the pass-book."

If there should be any acknowledgment or other act on the customer's part, expressly or impliedly evidencing his assent to the correctness of the pass-book, the position would be different and the banker would be protected. There is a kind of quasi-contract known to the law as a "*settled-account*," whereby parties, agreeing to a stated form of accounts, reduced to a balance which is accepted as correct by the parties, are bound thereby and cannot thereafter, in the absence of fraud, re-open the account. Bankers frequently endeavour by specific notices and requests accompanying the pass-book to procure such an acknowledgment from the customer, but it is believed that the result, generally

speaking, is not encouraging. The careful and methodical customer will note and sign such an acknowledgment and return it to his banker; but he is just the kind of customer who would, in any event, be likely to check his pass-book carefully and notify the banker at once of any discrepancy between it and his own books. The man who, temperamentally, is likely to send his pass-book back after a most cursory examination, is also the man who would put the bank's polite request for its careful scrutiny into the waste-paper basket.

There is a growing tendency amongst the banks, especially in their larger branches, to issue their current account statements to customers, not in the form of a pass-book, but in the form of a loose (i.e., unbound) monthly statement sheet. This differs from the pass-book only in form, and any differences in effect are to be discussed only from the point of view of relative convenience.

There is in the judgment in *Akrokerri Mines Ltd. v. Economic Bank* (1904), 2 K.B. at p. 470, judicial *obiter dicta* for the proposition that the pass-book is the property of the customer.

#### (q) Safe Custody of Documents, etc.

A practically universal custom has made it one of the recognised parts of the banker's business in New Zealand to receive and hold, for safe custody, valuable goods, documents and instruments on behalf of his customers. As a general rule, in fact we may say that with one exception only, the banker in New Zealand does not make any charge for this service. In its origin it was probably considered good policy for the banker to place at the disposal of his customer his facilities for safe storage, and his businesslike methods and system of recording articles entrusted to him for safe-keeping. The exception referred to is the charge made in New Zealand (as elsewhere) for the safe-keeping of debentures and collection of interest coupons attached thereto.

This arrangement for safe custody between banker and customer is, like most other forms of agreement between

business men, a contract. If we wish to classify it more closely, it would seem that it is of the kind known as a contract of bailment.

A contract of bailment is one relating to chattels, the property of one person, known as the bailor, who, for some purpose made known at the time, gives the possession and custody of those goods to another person, known as the bailee. We may still further classify this contract between banker and customer because bailments are divided into two main classes, viz., (a) bailments for reward; and (b) Gratuitous bailments.

The contract between banker and customer for safe custody of the customer's goods is clearly one of gratuitous bailment, the banker being what is known as a "gratuitous bailee." It was at one time thought or suggested that the advantages or benefits accruing to the banker by the custom of his bailor, a kind of implied promise that these would continue if the banker held the customer's goods for safe custody, was a consideration that would make the banker a bailee for reward. It is now generally conceded that this is not the correct view. There is nothing that comes to the banker in return for his services as custodian which would not come to him without them, and he is therefore clearly a gratuitous bailee, unless, indeed, the opening of an account or some other banking advantage were stipulated for at the time of the deposit of the goods for safe custody.

The distinction between a gratuitous bailee and a bailee for reward is often important when the question of the liability of the bailee is to be considered, the liability being measured by different standards in the two cases. A gratuitous bailee as such is bound to take the same care of the property entrusted to him as a reasonably prudent man would take of his own goods in such circumstances. A bailee for reward must provide such facilities and use such care as is generally used by and expected of persons carrying on that business. In the present case, however, we suggest that, while undoubtedly the banker is a gratuitous bailee, the importance



of the distinction does not apply to his case. All banks in New Zealand follow or comply with the standard of care which by common practice they have set up for themselves in this matter. This standard is undoubtedly a high one, and it is by it that a banker's liability would be measured in case of loss of the customer's goods entrusted to him. In other words, a banker would expect to be judged by the banker's standard; and that standard is at least as high as the highest standard the law otherwise requires.

It is possible, of course, that arrangements might be made, at the time of the lodgment of any particular parcel by a customer for safe custody, for a payment in return for the banker's service. If that were done, then (as in the case of debentures already referred to) the banker would be a bailee for reward. But as we have pointed out, the distinction in the case of bankers is not important.

As a gratuitous bailee, the banker is bound to take such care of the goods entrusted to him as a reasonably prudent man would take in looking after his own documents and valuables. If he fails in this, he is liable to the customer, otherwise he is not liable. It does not follow that he will be liable every time goods are lost. We may imagine the case of a banker who admits that he received John Smith's deed box, and admits further that he has not returned it and is not able to return it on John Smith's demand. He is not, by those facts alone, bound to pay damages to Smith. At most, so far as we can say with certainty, the onus is on the banker of showing that the loss was not due to any negligence on his part. If the banker can show that the loss is due, say, to earthquake or fire which in spite of all precautions destroyed the goods while they were in a normally safe place, the banker will not be responsible. If a burglar or a thief should evade the banker's usual system of diligence and prevision and break into the strongroom and steal John Smith's deed box, the banker will not be liable if he can show that there was no negligence on his part.

It should also be noted that the banker's liability is not affected by his knowledge or ignorance of the contents of any parcel that might be entrusted to him. The meaning of this should be fairly obvious. If, on a box being lost through the admitted negligence of a banker, claim should be made for £500, the proved value of the lost articles, it would be no defence for the banker to say that he did not know the value of the articles entrusted to him. The position would be affected, however, by misleading statements made by the bailor at the time of leaving the goods with the banker. If the customer, by depreciatory references to his parcel should mislead the banker, that fact might be receivable to excuse the banker if the precautions he took were reasonable in view of the nature of the packet as represented by the customer, but probably inadequate if, to his knowledge, the goods were of considerably greater value.

It has not, in the past, been usual for the banker to give a receipt for goods left with him for safe custody. Sometimes, where the customer seems to require some protection, the entry is made in the Safe Custody Register in the presence of the customer. In all well-managed banks, however, the deeds or packets are promptly entered in the registers, whether the customer awaits to see this done or not, and there is a growing tendency to give receipts, if the customers ask for them. It seems clear that if the banker does give an acknowledgment of having received goods for safe custody, he will not thereby in any way increase his liabilities or obligations. (*Ross v. Hill* (1846) 2 C.B., 877).

A bailee is not responsible for the loss of goods entrusted to him if that loss is traceable to a felonious or criminal act by one of his employees, if the act is outside the scope of the employee's duties to his employer, and is not facilitated by any negligence on the part of the bailee. Presumably, therefore, a banker would not be responsible for a criminal abstraction of goods left for safe custody, made by a bank clerk for his own purposes and without negligence on the part of the banker. This principle was laid down in an American

Court and followed in England in *Giblin v. McMullen*, L.R. 2 P.C., 318.

Care should always be taken in the return of goods so entrusted to ensure that they are delivered to the right person. The banker's liability in this connection is absolute, i.e., if he delivers to the wrong person, he is liable to the true owner. If a written request or authority for the return of the goods is presented to the banker, he would be quite entitled, if he had any cause to doubt the genuineness of the order, to defer the delivery until he had satisfied himself by enquiry that the order was genuine. Where safe custodies are held on account of trustees, all the trustees must sign the acquittance when the valuables are returned.

There is, finally, one further rule relating to the liability of bailees which presumably applies to a banker. If goods are entrusted to a bailee to be stored in a certain or expected place the bailee is, as we have seen, not responsible for their loss or destruction at that place unless he is negligent. If, however, for his own purposes or convenience, he should remove them to store them in another place, he will be absolutely liable if they are destroyed or lost there or in transit, whether he is negligent or not. Having this in mind in the case of a box, too large to go within the safe custody or treasury grille, the wise banker takes a letter from the customer in which the latter admits that he is aware that the box will be kept on the floor of the open strongroom only, and not in the usual place. Thus the banker protects himself.

## (2) Bank and State.

### (a) Introductory.

In the Dominion of New Zealand the public accounts of the Government have been for about seventy years prior to 1934, kept with one bank only, the Bank of New Zealand. Various municipal and other local government bodies throughout the Dominion, each entrusted and charged with certain prescribed public activities and duties, are free to make their banking arrangements with any bank according to their own wishes and

convenience. In dealing with the relationship between the banking system and the State, in this part of this chapter, the generic term "the bank" or "the banker" will be used; it is not considered necessary to name any one of the six trading banks even when dealing with accounts that have been invariably kept with a bank that could be named. The principles outlined in this present chapter will not be affected by the substitution of the Reserve Bank of New Zealand for one of the trading banks.

**(b) The State as a Customer.**

In this part of this work there are subdivisions devoted to the headings "Banker and Customer," "Current Accounts," "Fixed Deposits," "Issue of Drafts," etc., in which the functions of banks in these relationships are described and discussed. It may be stated, for the purpose of introducing our present subject matter, that the relation between banker and State is that of banker and customer, and whether we consider the State's current accounts or fixed deposits, or the overdrafts of municipalities, or the State as a purchaser of oversea drafts, or as the holder of bills of exchange that may be required to be collected, the State is dealt with according to the same principles and by the same methods as any other customer. The public account of New Zealand, as kept with its banker, is a current account, or a number of current accounts, and they differ only in volume from those of other large customers of our banks. The State is a customer, many of whose transactions and sources of revenue are seasonal, but whose expenditures are fairly regular throughout the year. Like any other customer with transactions of this kind, the State must, when its regular disbursements have overtaken its revenue for the current period, go to its banker for temporary accommodation to enable it to carry on. When it requires this accommodation, it must through its executive officers approach the banker, and state the object and extent of the accommodation required, and indicate what security is available.

The banker, as the custodian of the marshalled wealth and credit of the community, applies to such a request for temporary assistance by the State, exactly the same principles and considerations as he would apply to a similar request from any other customer.

**(c) Limitations on Public Borrowing Powers.**

We have seen how, when dealing with the account of a corporation, the banker is always careful to satisfy himself that a proposal for accommodation by way of loan is *intra vires* of the corporation, in other words, that it is authorised by law as expressed, firstly, in the statutory general law, and, secondly, in the peculiar enactments expressed in the Memorandum and Articles of Association of the company. In the same way, the banker must be satisfied before granting accommodation to the State that the application is *intra vires* when tested by the Public Revenues Act and the Finance Acts. An example of what we mean can be seen in the legislation which limits the amount which the Government can borrow in any financial year by means of "Treasury bills"—the stipulated form of borrowing for the Government. Treasury bills are short-dated liquid securities which the Treasury is authorised to issue against uncollected revenue to carry on in those portions of the year where the revenue collected does not keep pace with the expenditure; Parliament enacts from time to time a limit on the extent to which these Treasury bills can be issued, the limit being expressed as a certain percentage or proportion of the previous year's revenue. The banker would not accept as security for temporary accommodation Treasury bills in excess of the limit fixed by statute for the time being. In these transactions the banker may deal sometimes with the Treasury officials, and sometimes with the Minister of Finance, at other times, perhaps, with the heads of such departments as the State Life Insurance Office, or the Public Trust Office. In such cases, again, the banker applies the same principles and considera-

tions as in the case of any other corporate body. He will make it his business to be acquainted with the incorporating or empowering Act which fixes the functions and powers of the department in question, and which prescribes its financial constitution, its powers of borrowing, and the limits of those powers. In the same way in dealing with a municipality, such as, say, a City Council, the banker firstly assures himself that the proposed borrowing is within the limits fixed by law for the borrowing of such corporations (a proportion of the previous year's revenue) and, secondly, satisfies himself that the proposed overdraft is required for the usual expenditure of the local body. This matter is more fully dealt with in the chapter on overdrafts and securities.

**(d) Bank Policy and Public Interests.**

The banks in the Dominion are always working towards and within a more or less well-defined policy, which may change from time to time, according to the banking view of the financial and economic state of the country, and its financial and economic tendencies. To know these conditions and to recognise these tendencies, is a test of the skill of the banker, and the success with which the associated trading banks have discharged the trust in their hands during the troublous years from 1921 to the time of writing, 1934, is a standing tribute to their skill and good discretion. At times their policy may lead them, for instance, to discourage building, and to encourage primary production; at other times, it may lead them to favour our secondary industries and use caution in relation to extension of the primary industries; the ultimate object of their policy in all cases being what they honestly believe to be a financially sound Dominion, permeated with confidence and tending towards sound development. Their views on these conditions and tendencies would be their guide on any occasion when the executive officers of the State approach them for accommodation; and, were any serious divergence of views between

the State's officers and the directors of the banks' policy to arise, a clash between banks and State would be inevitable. That it has not occurred is a tribute to our bankers, our Cabinet Ministers, and the permanent administrative officers of the Government.

This consideration leads us to give a wider significance to the term "State" than we have given it so far. We have, so far, principally viewed the State as identifiable only through the executive and administrative officers of the Central Government and of our Municipal Corporations. When dealing with the Public Account of New Zealand, the banker is admittedly dealing with the State and affecting and facilitating State rights and assisting towards State functioning and development. It would seem, however, to be quite sound and reasonable to include under the present heading, and to view as an example of the interworking of banking functions and State interests, the application of the banks' policy to all their customers in the aggregate. When, for instance, in a time of crisis, as during a time of war, the bankers say amongst themselves, and then to their customers, "We will not grant facilities at the present time for luxuries and unnecessary services, such as imported pleasure motor-cars, and the erection and equipment of picture-shows"; or, when, at other times they say "We will not look favourably upon applications for more building in the cities, but we desire to encourage applications that will increase the number of primary producers and the Dominion's output of primary productions;" the formulation and putting into operation of such a policy as that is undoubtedly properly included under the heading "Banker and State." It is, *inter alia*, this consideration that has recently found expression in the legislation designed to bring into operation a Central Reserve Bank. The argument is, that, taking banking functions as a whole, they affect, and must affect intimately, the financial and economic interests of the Dominion, and they are so potent a weapon for correcting and directing tendencies, for developing at one point and

restraining at another the economic and industrial life of the community, that they should not be in private hands. In theory, this proposition must receive support. At the same time, to acquiesce in that proposition is not inconsistent with the honest expression of sincere admiration for the way the banks in the past have exercised the discretions and honoured the trusts placed in their hands. The real explanation of this undoubted fact is that there is no conflict between the best interests of the Associated Banks and the best financial interests of the Dominion. The directors of the banks, functioning under an obligation of publicity that is laid on no other private calling, seek to preserve their respective institutions on a sound and profit-earning basis and to be able to make and distribute publicly-declared dividends to their shareholders. This they can do while the Dominion is in a sound financial position, and the sounder and more prosperous it is, the less anxiety those directors feel. We are of opinion that nothing but inexcusable ignorance of the subject of banking, can foster and stimulate into speech the belief that seems to exist in some quarters that the banks in some way thrive on ruined customers, hampered industries and thwarted State activities. The Executive of the Dominion gains and holds its office by the will of the people expressed at a periodical election on universal suffrage. The directors of the banks gain and hold their offices by an election in a limited constituency, the voters of which are those who have entrusted a portion of their wealth to the bankers as share capital. This may seem a very limited constituency, but that is a partial view only of the whole scheme. In maintaining these directors in their positions, far more important than the votes of shareholders are the confidence and continued support of depositors right through the Dominion—depositors who are free to choose the bank with which they will do their business, or whether they will trust it to the private banks at all. Again, from this new point of view, we may repeat that it is a tribute to both our statesmen and our bank executives that



the Governmental heads, dependent on a vote of the people, and the banking heads, dependent on the vote of the shareholders and the support of depositors, have worked together without friction for many years in maintaining and administering the interwoven interests and transactions of banks and State.

**(e) Banks and Publicity: The Bank Returns.**

One of the healthiest checks imposed in the public interest on the business of banking throughout the British Empire, is the obligation to publish, at regular prescribed intervals, certain accounting and statistical returns and summaries. This requirement has, as one of its objects, the check imposed by public opinion on any tendency to derive from dealings with the public, and in the public currency, an undue profit. A second object is to secure publication from time to time of what is, in effect, a summarized statement showing the result of the country's trade and financial transactions for a given period.

These objects are proclaimed in the preamble of "The Banker's Returns Act, 1858," the first legislative demand for periodical banking returns. The preamble runs:—

"Whereas for the information and better security of the public, it is expedient that bankers in the colony of New Zealand should furnish periodically, statements of their assets and liabilities to be published as hereinafter provided: Be it therefore enacted, etc., etc., etc."

Then followed the provision that quarterly statements or returns made up to the last Monday in March, June, September and December, of the averages shown by weekly statements prepared each Monday, should be published in the *Government Gazette*. The form in which this statement was to be prepared and published was prescribed in a Schedule to the Act. The Act suggests a few interesting considerations to present day bankers. One is that, thus early in the history of the country, the close connection between the functions and operations of banking cor-

porations and the vital interests and financial life of the commonwealth were recognised. Another is that the form there prescribed and the procedure laid down has continued practically unaltered to the present day. Still another point is that the form of this published return and the procedure of publishing it did not originate with this Act, the banks were already publishing such returns. The Crown, in granting a Charter or Letters Patent, and the Governments in charge of affairs from time to time have always been very careful to safeguard the general rights and interests when granting incorporation. It has been the invariable procedure, when these forms of incorporation were availed of—for the granting body to prescribe forms of account, to order publication of accounts and to limit the rights of the corporation at points at which the rights of citizens generally are concerned. So when a bank is thus incorporated, its Charter or special Act will always place limits on its rights to issue paper money and incur liabilities and will order the publication of returns and accounts. The New Zealand statute we are now considering secured uniformity in form and correspondence in dates for the publication of this information, and ensured that all banks, no matter how constituted, should fall into line in these respects.

In 1860 an amending Act was passed making the Bankers Returns Act less rigid in the matter of dates. It enacted that discretion should be and was thereby vested in the Governor to vary the dates prescribed for publishing the returns provided that there should be at least four publications per annum and that they should be published at regular intervals.

In 1908, when our general laws were consolidated, the various laws relating to banking were embodied in "The Banking Act, 1908," and sections 11 to 18 inclusive of that Act deal with the subject of bank returns. Section 11 is as follows:—

11. Every bank shall at the dates and times hereinafter mentioned, prepare and make up returns in the form in the Second Schedule hereto, showing,—

- (a) At the close of business on Monday in every week a full and correct account and statement in writing of the assets and liabilities of the bank at each place where the bank carries on the business of banking in New Zealand; and
- (b) On the last Monday of each quarter ending on the last days of March, June, September, and December respectively a general abstract in writing, from such weekly accounts and statements, of the average amount during that quarter of the assets and liabilities of the bank; and also a separate abstract for each place at which the bank issues notes payable thereat in gold.

12. (1) To each of such quarterly abstracts there shall be subjoined a statement showing the amount of capital of the bank paid up at the close of the quarter, the rate and amount of the last dividend declared to the shareholders or proprietors, and the amount of the reserved profit at the time of declaring that dividend.

(2) As regards banks that carry on business beyond as well as in New Zealand, it shall be sufficient to state the same several particulars according to the latest advices received in New Zealand.

13. Such quarterly abstracts and statements shall be verified by the oath of the manager, or, in his absence, by the oath of the chief cashier or chief clerk of the bank at the place in respect of which the same are made, and shall be forthwith delivered or transmitted to the Minister of Finance, or to such other public officer as the Governor from time to time appoints.

14. In the case of each bank every such quarterly abstract and statement, or an abstract or statement compiled therefrom, including all the places of business in New Zealand of the bank in one abstract, shall be published, as soon as conveniently may be, in the *Gazette*.

There follows provisions fixing penalties for neglect to keep accounts or make returns or for making false statements or returns.

The form of the return is set out thus as the Second Schedule of "The Banking Act, 1908":—

Bank Return.

Statement of the Average Amount of Liabilities and Assets  
of the Bank at , during ended .

Liabilities.						£
Notes in circulation	.....	.....	.....	.....	.....	
Bills in circulation	.....	.....	.....	.....	.....	
Balances due to other banks	.....	.....	.....	.....	.....	
Government deposits	.....	.....	.....	.....	.....	
Other deposits	Not bearing interest	.....	.....	.....	.....	
	Bearing interest	.....	.....	.....	.....	
Total average liabilities						£

Assets.						£
Coined gold and silver, and other coined metal	.....	.....	.....	.....	.....	
Gold and silver in bullion or bars	.....	.....	.....	.....	.....	
Notes and bills of other banks	.....	.....	.....	.....	.....	
Balances due from other banks	.....	.....	.....	.....	.....	
Landed property	.....	.....	.....	.....	.....	
Amount of all other securities—						
1. Notes and bills discounted	.....	.....	.....	.....	.....	
2. Government securities (New Zealand or otherwise)	.....	.....	.....	.....	.....	
3. Other funded securities	.....	.....	.....	.....	.....	
4. Debts due to bank (exclusive of debts abandoned as bad)	.....	.....	.....	.....	.....	
5. Securities not included under the above heads	.....	.....	.....	.....	.....	
Total average assets						£

Amount of the capital stock paid up at the close of the quarter  
ended , 19 :

Rate of the last dividend declared to the shareholders:

Amount of the last dividend declared:

Amount of the reserved profits at the time of declaring such  
dividend:

Dated at , this day of , 19 .

I, A.B., swear that to the best of my knowledge and belief the foregoing abstract is a true and faithful account of the average amount of liabilities and assets at of the above-named bank, during the period specified, and that the same was made up from the weekly accounts and statements thereof kept in pursuance of "The Banking Act, 1908."

Sworn at , this day of , 19 , before me,  
C.D., Justice of the Peace.

The use of this form is exemplified by the return made, in obedience to the statute, by the National Bank of New Zealand, on the 30th day of June, 1929. It appears in the *New Zealand Gazette* of 18th July, 1929, at page 1879, and is reproduced below:—

Statement of the Average Amount of the Liabilities and Assets of the National Bank of New Zealand, Ltd., in New Zealand, during the Quarter ended 30th June, 1929.

Liabilities.						£
Notes in circulation	.....	.....	.....	.....	.....	1,147,721
Bills in circulation	.....	.....	.....	.....	.....	15,755
Balances due to other Banks	.....	.....	.....	.....	.....	14,769
Government deposits	.....	.....	.....	.....	.....	23,077
Other deposits—						
Not bearing interest	.....	.....	.....	.....	.....	4,489,440
Bearing interest	.....	.....	.....	.....	.....	4,435,733
Total average liabilities						<u>£10,126,495</u>

Assets.						£
Coined gold and silver and other coined metals	.....	.....	.....	.....	.....	850,266
Legal tender notes of other banks	.....	.....	.....	.....	.....	19,585
Gold and silver in bullion or bars	.....	.....	.....	.....	.....	3,309
Notes and bills of other banks	.....	.....	.....	.....	.....	187,089
Balances due from other banks	.....	.....	.....	.....	.....	239,769
Landed property	.....	.....	.....	.....	.....	431,692
Amount of all other securities—						
1. Notes and bills discounted	.....	.....	.....	.....	.....	154,090
2. Government Securities (New Zealand or otherwise)	.....	.....	.....	.....	.....	831,690
3. Other funded securities	.....	.....	.....	.....	.....	
4. Debts due to the Bank (exclusive of debts abandoned as bad)	.....	.....	.....	.....	.....	9,199,309
5. Securities not included under the above heads	.....	.....	.....	.....	.....	426,562
Total average assets						<u>£12,343,361</u>

Amount of the capital stock paid up at the close of the quarter ended 30th June, 1929, £2,000,000.

Rate of the last dividend declared to the shareholders, 12 per cent. per annum for half year.

Amount of last dividend declared, £120,000.

Amount of the reserved profits at the time of declaring such dividend, £2,335,572.

Dated at Wellington this 8th day of July, 1929.

J. T. GROSE, General Manager.

A summarised statement of the returns of the six trading banks, is also prepared and published showing the aggregate figures for the Dominion's banks. This summary for the quarter ended 30th June, 1933, as it appears in the *New Zealand Gazette* for July 13th, 1933, at page 1905, appears on the inset at pages 206 and 207 of this volume. For convenience of printing, the "shillings and pence" in the statement as originally published, have been excluded.

We refer, at the beginning of this chapter, to the fact that the form of these returns has undergone very little change since the beginning of banking history in New Zealand in the middle of last century. As a matter of fact the requirement of publicity in these matters and the prescribed particulars and form may be dated back to the beginning of banking corporations in England. When the Bank of England was first brought into being it was required as one of the terms of its charter to publish periodical returns which, in their main purpose and form resemble the foregoing forms closely and which are clearly the origin of the principle and form which characterize our present day returns.

The banks doing business in Australia are under a similar obligation and the form of their published returns resembles our own so closely that a comparative examination of them is rendered easy and no difficulty is experienced in combining them and producing aggregate banking figures for Australasia.

In addition to the returns which have already been mentioned, the banks in New Zealand are obliged, in terms of Section 46 of "The Reserve Bank of New Zealand Act, 1933," to furnish monthly returns to the Reserve Bank of New Zealand, and it is incumbent upon that bank itself, to

STATEMENT OF THE LIABILITIES AND ASSETS OF THE UNDERMENTIONED BANKS IN THE DOMINION OF NEW ZEALAND FOR THE QUARTER ENDED 30th JUNE, 1933.  
LIABILITIES.

Banks.	Notes in Circulation.	Bills in Circulation.	Balances due to other Banks.	Deposits			Transfers from Long- term Mortgage Department.	Total Liabilities.
				Government.	Not bearing Interest.	Bearing Interest.		
Bank of New Zealand	£ 3,785,445	£ 66,585	£ 20,205	£ 1,740,206	£ 8,938,122	£ 18,442,663	£ 158,219	£ 33,171,535
Union Bank of Australia, Ltd.	478,985	39,262	16,153	76	2,124,800	4,079,112	.....	6,738,388
Bank of New South Wales	516,157	16,378	908,153	.....	1,999,316	4,104,735	.....	7,544,739
Bank of Australasia	346,254	7,799	689,846	.....	1,626,787	3,127,583	.....	6,798,271
National Bank of N.Z., Ltd.	990,657	12,474	.....	.....	3,334,950	6,368,128	.....	10,706,209
Commercial Bank of Australia, Ltd.	187,562	1,551	28,923	25	822,470	745,336	.....	1,785,867
Totals	6,305,060	144,049	1,663,370	1,740,307	18,866,445	39,867,557	158,219	65,745,009

## ASSETS.

Banks.	Coined Gold and Silver and other Metals.	Gold and Silver in Bullion or Bars.	Legal Tender Notes of other Banks.	Notes and Bills of other Banks.	Balances due from other Banks.	Landed property.	Notes and Bills discounted.	Government Securities.	Other Funded Securities.	Debts due to Bank, exclusive of Debts aband- oned as Bad.	Securities not included under other Heads.	Total Assets.
Bank of N.Z.	£ 2,067,389	5,486	22,560	£ 145,567	£ 970,516	£ 501,234	£ 425,519	£ 7,670,486	£ 341,215	£ 20,662,327	£ 111,377	£ 32,923,676
Union Bank of Australia, Ltd.	629,511	.....	2,398	49,239	119,482	30,000	14,047	116,694	20,768	5,439,131	27,659	6,448,929
Bank of N.S.W.	815,960	3,983	4,939	16	42,559	190,919	51,575	1,358,139	.....	5,594,150	36,888	8,099,128
Bank of Austl'sia	734,957	82	1,236	34,582	.....	30,559	61,155	666,621	.....	4,439,624	185	5,969,004
National Bank of N.Z., Ltd.	687,740	3,662	8,875	89,510	510,000	439,183	43,174	4,047,008	.....	8,663,489	205,955	14,698,596
Commercial Bank of Australia, Ltd.	129,687	.....	2,391	28,729	21,846	102,900	14,262	186,527	.....	1,348,658	2,945	1,837,945
Totals	5,065,244	13,213	42,399	347,643	1,604,403	1,294,795	609,732	14,045,475	361,983	46,147,379	385,009	69,977,278

CAPITAL AND PROFITS.

Banks.	Capital paid up.	Rate per Annum of last Dividend.	Amount of last Dividend declared.	Amount of Reserved Profits at Time of declaring such Dividend.
Bank of New Zealand—	£		£	£
4 per cent. stock guaranteed by the Govt. of N.Z.	529,988	Four per cent. ....	10,599	3,919,795
Preference A shares issued to the N.Z. Government	500,000	Ten per cent. per annum	50,000	.....
C long-term mortgage shares issued to the N.Z. Govt.	234,375	Six per cent. per annum	14,062	.....
D long-term mortgage shares	468,750	Seven and one-half per cent. per annum	35,156	.....
Preference B shares issued to the N.Z. Government	1,375,000	Eight and forty-three cent. per annum	123,437	.....
Ordinary shares	3,750,000	Eleven and one-quarter per cent. p.a.	421,875	.....
Union Bank of Australia, Ltd.	4,000,000	Four per cent. per annum	80,000	4,850,000
Bank of New South Wales	8,780,000	Five and one-quarter per cent. per annum	460,950	6,150,000
Bank of Australasia	4,500,000	Eight per cent. per annum	180,000	2,614,783
National Bank of New Zealand, Ltd.	2,000,000	Four per cent. per annum	40,000	2,202,294
Commercial Bank of Australia, Ltd.	2,000,000	Five per cent. per annum	50,000	.....
	2,117,350	Four per cent. per annum	42,347	2,250,000

The Treasury, Wellington, 13th July, 1933. \*

A. D. PARK, Secretary to the Treasury.



publish weekly statements of its assets and liabilities. For particulars of these statutory obligations, the reader is referred to Section 46 and the Second Schedule of "The Reserve Bank of New Zealand Act, 1933," the text of which appears as an appendix to this volume.

**(f) Banks and Trade Movements.**

The statement cannot be disputed that the banks of New Zealand form an absolutely essential part of the economic and financial machinery of the country; we think it would be impossible to over-estimate their importance. It is a well-recognised fact that since the beginning of this century business and trade have been more scientifically and more thoroughly developed and organised than ever before. With this development has come a recognition of the tremendous importance in trade and manufacture of a good system of accounting; indeed, there is no gainsaying the fact that it is only the recognition of the importance of accounting, and the adoption of the fruits of the labour of skilled accountants, that has made the present-day development of trade and manufacture possible. This is more particularly true of the highly organised and specialised branches of manufacture. The more highly organised and specialised a business is, the more it is dependent on the skill of the accountant. These well recognised facts are marshalled by way of leading up to the submission that our trading banks of to-day form the most important branch of our national accounting system. The bankers act as a clearing house for the settlement of all transactions and keep the accounts of the community as a whole; their periodical aggregate returns convey, or should convey to the statesmen or financier, much the same kind of information that the cost accounts and annual accounts of a factory convey to its managing director and proprietors.

Let us, by way of descending to details, place before ourselves the question—"What is necessary to a successful and a prosperous national life in New Zealand" We think

the following answer (considering that it must be brief) is correct and comprehensive.

- (1) There must be the highest and most profitable form of production;
- (2) There should be encouragement of thrift and industry;
- (3) The wealth arising from this production should be well distributed and its surplus should be directed into wise channels;
- (4) Every possible encouragement should be given to oversea trading (as our population is at present distributed and organised, most of our production would be a waste of effort without oversea trade).

Let us now look at these requirements and see to what extent we are dependent on our present-day banking system to accomplish these desirable ends.

First, there is the matter of production. Production to-day covers not only the winning of materials and the farming of the land, but also the rendering of services of various kinds. These, in our community could never function on a basis of barter; they require an organised system for recording token transfers by cheques and currency to facilitate quick and convenient settlements, and satisfaction between diverse and widespread classes and units of our community. These necessities predicate a system of banking.

The whole of our commercial life is built upon a system of credit. Let us explain this statement, using the sheep-farmer as our example of the primary producer. The sheep-farmer produces wool, sheepskins and mutton. Having produced them, it is his desire to get rid of them, but only on the basis of eventually receiving in return an equivalent in value. Two or three methods suggest themselves, in which he may effect this exchange of the wool he does not want, for the fencing wire, implements, clothing, food and the means of transport, which he does want. We may examine three possible ways:—

- (1) Barter of goods for goods;
- (2) Barter, with the intermediate use of the recognised coins of his country, i.e., exchange of wool for coin, and coin for fencing wire, and so on;
- (3) A system of credit whereby the value of his products shall be recorded in his favour, to be written off as value in exchange is acquired by him.

Methods (2) and (3) may be used simultaneously.

Let us now examine these various methods:—

Barter might be quite possible on a small island with three or four inhabitants, but even then it seems clear that the system would restrict production. Barter is, however, quite impossible in our community, on any appreciable scale. How would the sheepfarmer begin to set about finding out one who was willing to exchange fencing wire and a motor car for so many bales of wool? How much of his time would be occupied in making these enquiries, and later, in actually effecting the transfer of chattels? He would first have to find someone with a double coincidence of wants and desires, i.e., someone who both wanted what the farmer had to exchange and who had to exchange what the farmer desired to acquire, and secondly, there might be the difficulty that the goods they desired to exchange were not of equal or divisible value.

Secondly, there is barter, with the intermediate use of coins. We pass by, with bare mention, the obvious danger and difficulty to the farmer of having to keep his year's income on hand in the shape of coin. We pass this difficulty by lightly because of a greater and equally obvious difficulty; this is, that there is not now, never has been, and never could be enough coin in New Zealand to carry out our internal operations on this basis.

We are therefore driven to the third method, the use of credit—the recorded credit in the books of the bank, and what we may call the floating credit of cheques, bills and bank notes based upon and redeemable out of that recorded credit. This credit system involves the use of banks, and the

whole of the stupendous complex edifice of our credit is centred in our banking system. By using that system, our primary producer can give his whole time to production, and although he may understand very little of our system in the aggregate, he may, if he is a man of average intelligence, easily understand his share of it as recorded in his cheque book and bank pass book. He may never leave his homestead in the course of a whole year, but by means of the Post Office and the Bank he may during that year effect the exchange of his wool, skins and mutton, for those things which he desires.

The second essential to the prosperity of our country was stated as being the means of thrift and an encouragement of thrift. Here the banker plays an important part. His elementary function of being a caretaker of money is useful to this end, for many a pound is saved by being paid into the bank instead of remaining in the owner's pocket. Furthermore, the banker is the recorder of thrift in the aggregate. His returns show the extent, if at all, to which the community is living within its income. There are certain returns which our banks are required to make periodically and these show the movements, i.e., the increases and decreases of the total current accounts and deposits of the customers of the banks. Thus it can be seen when thrift is being practised, and this exercises an important suggestive effect on the community. Furthermore our statesmen or prominent bankers are often able to make and do make, by deductions from these returns, important warning statements. In dealing with this phase of our social activities, the Savings bank figures have also to be taken into consideration.

The third essential to the well-being of our community is that wealth arising from national production should be first recorded, and secondly well and equitably distributed, and thirdly that its surplus should be directed into wise and useful channels. It is in the third of these requirements that the banks perform a very important national function. They marshal our surplus credit and wealth, and record for

us its amount; they gather in credit and wealth from individual sources and apply it where wanted. Scattered in the pockets and hiding-places of thousands of the people, the wealth of the community is useless for productive purposes; aggregated in the banks, the numerous small sums make an imposing array and may be usefully directed in production and secondary industries. There is no doubt that here we see a tremendous trust reposed, an important national function in the hands of private corporations. The dangers of such a system are obvious, but so far, in British communities, the system has worked well. The safeguard to the community must be a recognition of the importance of the function, and the payment of respect and adequate incomes to the men who exercise and control the function. We are bound at many points in our national life to place power in the hands of individuals. Thus we place in the hands of a judge the power to settle authoritatively issues touching the property, liberty, and sometimes even the life of his fellow subjects. Here again the safeguard to the community is the fact that the office commands respect, social standing, and, theoretically, an income that removes the holder from the sphere of competitive financial efforts and transactions.

To revert to consideration of the banker's position in organising the surplus credit and wealth of the community and guiding it into safe and profitable channels, we submit that it would be hard to over-estimate the importance of this function. It is true that the head of a banking institution who controls its policy and directs its fortunes has primarily in view the safe and profitable working of his shareholders' business. It is a self-evident proposition however, that no man who has sufficient resource and ability to retain and hold such a position, could fail to realise very clearly the fact that the fortunes, firstly of the customers of the bank, and secondly, to a large extent, of the communities in which the bank does business, are indissolubly tied up with the fortunes of the bank itself. An unwise and reckless lending policy pursued by a large bank in the ordinary course of events tends to

unduly inflate credit and create a false prosperity. It fosters and encourages unremunerative expenditure and is apt to end in a crash which brings misery into thousands of homes. A realisation of these things should, and does, exercise a steadying effect on the management of a bank. A bank makes its profits and establishes itself in safety, in a prosperous community, and self-interest must compel directors and managers of banks to be close students of factors and tendencies that make for national stability and prosperity.

The bank organises and records credit and wealth by receiving deposits on current account and fixed deposit, and publishing periodical returns of the movements in these deposits. It distributes this credit and wealth and guides it into useful channels by lending it on proper security to those persons who can show a useful outlet. This distribution is made in two directions. Firstly, in making loans to private individuals, and secondly, in underwriting public loans or by subscribing for or buying Government securities.

**(g) Financing Public and Private Enterprise.**

Where a public body such as the Government or a City Council or other Local Body wishes to borrow money, it usually commences by issuing a prospectus in which it states the terms of offer of the loan. It sets out the amount of the loan and the nature of the loan, i.e., whether it is by debenture or other bonds, the amount of individual bonds, the rate of interest and term or period for which the money is borrowed, and it usually sets out a date on which applications for the loan or a share in the loan will be closed. Experience shows that it might have a very serious effect for a Government or other public body, to launch a loan in this way and have it result in failure through under-subscription. No Dominion or City Treasurer would run the risk of such a thing happening, and to provide against this he usually enters into what is known as an underwriting agreement. This is effected by approaching (through the Government's brokers) the banks and other financial cor-

porations and entering with them into agreements whereby they undertake to guarantee the complete subscription of the loan. We may suppose, by way of illustration, that our Dominion Treasury decides to raise a £3,000,000 loan in New Zealand. Having in view the object we have just stated, the responsible state official would approach the various banks (and other large-scale investing corporations) and procure from them in due proportions guarantees relating to the subscription of the loan. By this guarantee the banks undertake that they will subscribe and provide the money for any portion of the loan not subscribed for by the general public. If, therefore, the general public by the time the closing date had arrived had subscribed for only £2,250,000, the underwriters would, in terms of their engagements, subscribe for the remaining £750,000, and thus the Government would be able to announce on the closing date that the loan had been fully subscribed. The underwriters of course expect, and receive, a commission for the risk they take in guaranteeing or "underwriting" the loan.

When a loan is raised in London the services of well-entrenched financial brokers must be utilised to procure underwriting agreements and to procure subscriptions to the loan when it is placed on the market.

This precaution of underwriting is always a wise one, even though, at the time of the first issue of the loan prospectus, a full public subscription seems a certainty. Anything might occur to occasion loss of confidence or to lessen the general desire to seek investment, even between the issuing date of the prospectus and the closing of the loan. In such a case, the underwriting agreement is, in effect, merely an extension of time for placing the loan, because, although on the closing date the banks, insurance companies and other underwriters are fixed as holders of a fair proportion of the loan, they may, and probably will, at any time thereafter, sell or unload the securities to the general public as financial conditions become normal again. Here, then, is an important public duty performed by the banks.

They have their own capital, which is to them a fixed portion of the surplus wealth of the community entrusted to them, and they also have their customers' deposits, which from the banks' standpoint may be described as a floating portion of the community wealth; and these they have marshalled and made available to assist the Government in developing the resources of the country.

London, as readers are aware, has always been and still is, the main centre for the raising of Government and large public-body loans. The banks and the brokers there specialise in these transactions and a considerable proportion of our national debt has been raised there, by the Central Government and by local bodies. The local market is, however, also approached and loans raised with the assistance of the banks and other large financial institutions in the manner indicated above.

#### **(h) Loans to Private Individuals.**

There is finally the function of the banker in finding an outlet for the wealth entrusted to him by lending it to private borrowers. We have seen during the war years how the Government arbitrarily interfered with building operations and company flotations to prevent the sinking of the Dominion's resources in unnecessary directions. Such an act on the part of the State is rare, but it is a thing that from time to time, in periods in which wealth and credit are limited, or demand for money is excessive, the banks have frequently done without advertisement or ostentation. Many a business man has gone to his banker with a loan proposition on which he has undoubted security to offer, and has been surprised to receive a polite refusal on the ground that the bank is at the time not considering loans for undertakings of that nature. In times like this, the banker's duty to the community is a delicate one and requires very nice judgment. Trade will be hampered and unemployment caused by an undue restriction placed on lending by the banks; whilst on the other hand unhealthy conditions are



aggravated and a day of sad reckoning made inevitable, by a lack of due caution in the matter. The banker has at his disposal complete records of the community wealth as disclosed by the aggregate figures of the bank's books. He, as an expert, should be able to read these figures in the light of the season's results, and the prospects and ordinary course of commerce in his country; and as an expert he should use the knowledge that these figures give him in deciding when to loosen and when to tighten the purse strings. Sometimes, the facts and figures which influence him in deciding to put the brake on, are such as make themselves apparent to the individual and the community in general. He sees that the available credit and wealth are insufficient for the commitments and national requirements of the near future. He sees this by the aggregate figures supplied by his bank and the other banks. What he sees in the aggregate, each individual in the community is apt to see in relation to his own affairs. The aggregate shortness in the national resources is merely the natural and inevitable result of adding together and viewing as a whole the resources and credits of all the business people, who individually are conscious of the shortage of funds. We had a striking illustration of such a state of things during most of the year 1921. There was one striking and peculiar feature of our financial and banking position in 1921 and we shall refer to this later, but it may be said, in general terms, that in 1921 the bankers were tending to tie up their purse strings and to lend sparingly. The banker, looking at the aggregate of figures for the Dominion, saw that our national income as compared with preceding years had dropped woefully; we had produced the same amount of meat, wool and grain, but prices for some products had dropped to less than half those ruling in the immediately preceding years, and therefore there was much less money available from our income sources than there was in the previous year. While the banker saw this in the aggregate figures for the Dominion, John Brown, a sheepfarmer near Napier, saw

with equal clearness that while he got £2,000 from his wool in 1920, he was not likely to get more than £800 in 1921. He needed no warning or checking from his banker to convince him that he could not spend to the extent that he did in the previous year. He shortened his employment of labour and curtailed his expenditure, and even his women-folk started to practise economy. The drop in exports is shown by the following figures:—

1919, total exports realised	£54,000,000
1920   "       "       "	£46,000,000
1921   "       "       "	£44,000,000
1922   "       "       "	£42,000,000

**(i) Trade Movements and Tendencies.**

The cumulative and aggregate effect of the farmer and his immediate dependants curtailing expenditure and shortening the employment of labour is quickly communicated to the retailer and the merchant, who find their customers spending far less than formerly and much more critical of prices. The merchant and the retailer need no warning from the banker that the lavish spending of their years of large profits has come to an end.

Now let us state the striking and peculiar position which added to the difficulties of the year 1921. In the period during and following the Great War, British and other manufacturers were faced with a tremendous influx of orders which they could not wholly fill and they therefore fell back on the obvious policy of "rationing" by supplying part of the goods and deferring the complete fulfilment of the order. Many traders met this position by ordering more than they needed in the hope that the "rationed" supply would meet their immediate needs, and they left the "deferred" portions of their orders to the future, and in many cases forgot about them. By 1920-21 the rush of orders had eased and manufacturers, desirous of keeping their employees and plant busy, began to fulfil these deferred orders, and our importers had to accept the goods in the majority of cases. The effect

of this development can be seen and appreciated if the following table of imports is studied in relation to the foregoing table of exports:—

1919, total imports	£30,000,000
1920    "      "	£61,000,000
1921    "      "	£42,000,000
1922    "      "	£34,000,000

The banker looking ahead saw firstly that heavy taxation had to be met. This meant that all the money standing to credit of customers' accounts and apparently available for use by the community, was not so available; a large sum had to be transferred to the Government Account and be held available for State purposes and expenditure. The banker also was being advised on all hands of unexpected and forgotten orders and indents coming to hand, seriously swelling the volume and value of the imports, and he realised that these must be paid for to protect the national credit. What he saw thus in the aggregate, and from the national point of view, the repentant and sobered merchant and importer saw very clearly from their individual points of view. The bank therefore lent to the importer to enable him to meet his commitments, and lent to him heavily; but this meant that to all other customers and for all other purposes he had to restrict lendings severely.

The recital of these facts is made to establish the point that there are times when the banker's judgment and decision to restrict credit and lending coincide with the general individual view and need no justification. No criticism was heard in 1921 that the banks' chariness to lend was based on ulterior motives and was not justified by the facts of the Dominion's trade and position. No! The 1921 tightness and shortage was due to a drop—a perfectly apparent drop—in our national income from our national resources, accentuated by a prior period of extravagance and waste and the peculiar incidents of our importing trade and policy. This illustrates the further point that our only source of wealth lies in our production. All our other

energies and industries involve only a distribution of the proceeds of our natural production. If returns for our primary products have fallen, there is no magic in the big figures which the banker handles to enable him to advance us money and let us spend as usual. If our productions do not yield us the ability to spend according to our desires, the only other sources from which either the individual or the community can draw are first, outside loans, and secondly whatever accumulations there may be of our past production and earnings lying unexpended, and capable of being disbursed.

There is one main object in view in our choice of the 1921 conditions to illustrate our present point, and it merits repetition. It is that there are times when the banker's judgment and decision that credit and lending should be restricted, coincide with the general view and need no justification. As illustrating the extent to which the banks lent money to the importers to help them in their peculiar position in 1920 and 1921, we publish the movements in overdrafts for the years March, 1920, to March, 1922. In studying these it must be remembered that during this period lending to all classes but importers was very stringently restricted.

*Average Overdrafts (in Millions).*

				<i>All Banks.</i>
				£m.
March, 1920	.....	.....	.....	30
June, 1920	.....	.....	.....	33
September, 1920	.....	.....	.....	37
December, 1920	.....	.....	.....	44
March, 1921	.....	.....	.....	49
June, 1921	.....	.....	.....	51
September, 1921	.....	.....	.....	45
December, 1921	.....	.....	.....	45
March, 1922	.....	.....	.....	44

It is not, however, always the case that the banker's judgment and decision that credit must be restricted

coincide with the general view; the banker's chief value lies in the fact that he must know better than the average man. He must never lose sight of the fact that nothing can be got out of nothing; that you cannot get out of a money box more than you put into it; and that if a John Smith in one hundred districts in the Dominion has produced less than he wants to spend, neither bank nor State can avoid the difficulties of the position by aggregating the resources and accounts of 200 or 200,000 such men with similar experiences, and, in the fog created by big figures, proceed to dole out to each man all his requirements. One reason why the bankers must be trusted to know better than the community is that in periods of economic and financial stringency political devices may be used to persuade a willing majority that it is possible in such circumstances to produce wealth, or to use the more modern and popular phrase, "spending power" that bears no relation to existing consumable wealth or immediate future drafts on surplus production.

Sometimes the demands and the financial views and theories of the community have not a sound relation to the facts of the case; the popular financial atmosphere may be rarer or thicker than that breathed by the banker who filters it through his quarterly returns and trade statistics. It is in such times that the responsibilities of the banker are great. He must be prepared to resist popular demands and theories and adhere to safe principles. Industrial crises have been the result of banks sharing, too readily, unjustifiably gloomy views that were popular at the time. Financial crashes have been the results of bankers following a boom and becoming inoculated with an optimism that was not based on production and recorded credits. These propositions are worthy of closer study.

**(j) The Psychological Factor.**

Trade and trade ventures, and credit, and commercial enterprise are apt to be very "touchy" and timid, and the

members of a community are quickly affected by example and suggestion. The political or financial outlook, as outlined in the newspapers, may affect the money market and there may come a period of fright and stoppage of enterprise. A "scarey" speech by a statesman might be based on the state of his liver, or a sleepless night, or a period of domestic infelicity, but it might seriously affect trade and commerce. Such a happening might easily bring about a state of affairs in which people begin to think and talk dolefully, and tradesmen soon become cognisant of a general feeling that trade is bad, and of the fact that people have ceased spending as usual. Perhaps a local reference may help to an understanding of the state of things we wish to describe and also to show how simply the state of trade may be affected. Shortly after the outbreak of war, a Dominion statesman made a speech in New Zealand on the local situation, and one part of that speech was construed and published as an injunction to the general public to spend not one penny more than was absolutely necessary. It is quite probable that what the speaker had in mind was a justifiable warning against unnecessary extravagance, and the necessity of our people altering many of their normal habits. As it was published however, the speech had a serious effect and it was found necessary for the wrong impression created by it to be removed by a special assurance to the effect that a sudden cessation of all but absolutely essential spending would bring immediate and serious harm to New Zealand's internal commerce.

Enough has perhaps been said to indicate the possibilities of the creation of a general atmosphere of dullness of trade, shortness of credit, and lack of enterprise at a time when the real facts relating to the country's credit and available resources do not warrant or require such an atmosphere. Such a state of things may readily become a panic, and when a state of panic creeps in, intelligence and reason are apt to fly out, and the community of reasonable beings trustfully trading with one another may become a body of

persons dominated by a spirit of distrust that is detrimental to ordinary business and dangerous to banking business; each individual seeking to procure his own safety without thought of the common weal.

A bank can do much at the beginning of a time like this to dissipate the general feeling of distrust, by wise lending. By wise lending, we mean ready lending for all useful trade ventures which show a reasonable margin of security. Such a period is apt to send, say, within a week, the majority of leading merchants and traders each to his bank for an interview with his bank manager. If each of those men goes back to his office to mingle with other traders with the assurance that his banker sees no cause for worry, that his overdraft limit is not to be cancelled, that if he wants an extension of credit for a time he may have it, he becomes a distributing agent of cheerful views and optimism. He can afford to be easy and optimistic with the retailer who approaches him to discuss the future, or with the contractor who was beginning to discuss with him an extension of his premises. Thus the light is apt to filter downwards and the atmosphere of distrust is dissipated. Walter Bagehot, in his "*Lombard Street*," says,—“It is ready lending which cures panics, and non-lending or niggardly lending that aggravates them.”

#### **(k) Trade and Economic Cycles.**

On the other hand, there is the period of boom and over-speculation, when there is an exaggerated idea of the extent of the community's credits and resources which is not justified by the facts recorded in the banks' returns. There is such a thing as a boom in production. A policy of settling men on the land proves successful, and the amount of goods produced is increased with the number of producers. Good seasons come, and this again tends to increase the volume of production. Then the world's prices for the country's products may be high, and the producer has more credited to his bank account as the proceeds of his labour

and production than he otherwise would have had. Everybody has more money to spend. The farmers extend their farms, and seek, like the man in the Scriptures, to pull down their barns and build greater. There are more jobs than there are job-seekers, and wages are high. The atmosphere is healthy and everybody remarks "what a prosperous time we are having." In such a period State borrowing is apt to be lavish in volume and optimistic and carefree in its objects; and this, by providing a further call for labour on public works, increases the competition for employees and increases the general sense of prosperity.

The state of things thus described presents the features of a typical boom occurring as a phase in an ordinary trade cycle of years. The happenings of the period 1920-21 have been chosen for illustrative purposes, rather than the period from 1930 up to the time of writing. The earlier period is now history, whilst we are (as this chapter is being written) still in the latter period. History can always be studied with a more judicial and analytical mind than current happenings. The period 1930-34, however, presents all the features referred to above, but comprises also some additional and unusual ones of great disturbing potency. The period 1930-34 followed a period of abnormal prices and of expanding production, a period in which borrowed money had been freely spent as revenue. Then, like a bolt from the blue, came a realization that that period was ended, and that the Dominion had entered a valley of depression. The prices of our produce in England dropped rapidly as our customers, British consumers, became unable to buy them. They became unable to pay the old prices for our products by reason of conditions that had developed in Great Britain. Those conditions may be briefly summarised. The eleven years following the close of the war had been an abnormal period, when nations and individuals had followed a policy, and acted on a philosophy of life, almost worthy of "Alice in Wonderland." During four years of war, trade had been diverted from its ordinary channels into channels of destruc-



tion. Britain had been spending over £1,000,000 a day on a series of destructive explosions ranged in a line across Europe, involving the transport of millions of men to the scenes of those explosions, for the purpose of facilitating and directing them. Other nations were doing the same, and the stored-up capital and property of the nations were being dissipated in dust and smoke at an expenditure of many millions per day. The manhood of the nation was being spent in this process, and the youth of the nation that, in the ordinary course of events, should have entered the industrial and economic machine to pick up and carry on the nation's trade, was being diverted, instead, to the scenes and operations of destruction described above.

If a dispassionate view of the conditions that must have obtained at the end of the fourth year of these operations, be taken, it is surely only common sense to believe and expect that the next period should be one of economy, hard work and simplicity of life, in an endeavour to make up the deplorable waste that had taken place, and to replace the normal equipment and means of normal life and trade. Instead of this, however, it is a matter of indisputable history that the civilized world entered on a period of apparent prosperity and ease that has proved wholly illusory. Trade prices went up; luxury supplies were in demand everywhere, and more and more human endeavour and energy were diverted year by year into luxury production. The political reactions and transactions following the terms of the peace treaty added other troublesome factors to the problem. Arbitrary sums called "debts and reparation payments," due by certain nations to other nations, were fixed, and the nations' bankers and financiers, whose delicate machinery, gradually evolved out of trade requirements, had been designed to effect settlement of trade and financial debts and obligations, were asked to take these arbitrary sums into account and include them in their settlements. It became quickly apparent that these debts and obligations could not be settled, or in any way contribute to their own settlement,

by trading or other normal transactions. It became apparent therefore that recourse would have to be made to the recognized international medium for settlement, namely, gold. These so-called debts and obligations, with their allied problems, had to be re-opened at conference after conference, and it became apparent that the world's gold reserves were not sufficient to enable settlement of these huge sums to be made in gold, and furthermore, that, to the extent to which they could be so made, the effect was to hamper and embarrass both the nations who suffered a shortage and those that experienced a "glut" in the process. This problem became still further complicated by a policy of self-contained nationalism being adopted by nation after nation. It seemed for a period that the more our statesmen talked internationally, and, with their eyes on the far horizons, delivered themselves of international ideals, the more politicians and parliaments turned their eyes inward, pursuing policies and enacting laws restricting the flow of international trade.

Most of these factors originated and found their fields of operation outside New Zealand, but this Dominion quickly felt the effects to the full. The prices of our products on the London market fell until in 1931 and 1932, the national income produced by the sale of our products was only half what it had been in 1928 and 1929. Our primary producers and those distributors who were engaged in activities arising from the export branch of our trade had so much less to share between them for their means of livelihood, and in consequence, farmers were left without incomes, and very many workers were thrown out of employment. Imports fell away proportionately. In 1928 and 1929 our imports were approximately £40,000,000. These consisted of goods that had to be carried here in ships, landed, tallied, stored, carried to warehouses, unpacked, costed, sorted, sold, and carried again to the buyers. In the retail shops, they had to be again unpacked, costed, stored, sold and delivered.

In 1932 the total imports dropped to £18,000,000, and the army of men that was required in New Zealand to land, tally, store, carry, cost, sell, pack, unpack, sell, and deliver £22,000,000 worth of goods was thrown out of work. Government borrowing stopped, and the small army of Public Works men who had come to expect annual wages out of borrowed money as a normal state of things, was also thrown out of work. Taxation increased, and the confidence of business men in the Dominion's affairs as a "going concern" ceased, and the owners of credit balances in the banks and of other forms of credit ceased to look for outlets for their money and goods; they ceased to invest and spend.

The banks have been blamed, in unthinking circles, for this state of affairs. The trouble has been described as a monetary trouble. Neither of these claims will survive intelligent investigation. There is no evidence that the banks at any stage of this period adopted the policy of restricting credit by refusing to lend for sound projects on reasonable security. There is abundant evidence that citizens with credit balances lying idle in the banks have refused to withdraw those moneys and spend them; they ceased to look out for avenues of investment. Similarly those who in normal times might have been expected to undertake business ventures on money borrowed from the banks, ceased to go to the banks for accommodation. Both of these classes have ceased normal spending operations for the same reason, viz., that they could not find any opening in the existing state of things that inspired them with sufficient confidence to invest their money and energy in it. The crisis is an economic one—not a monetary one.

There is probably not a country in the world so happily placed as New Zealand, to make its choice of more than one effective standard and medium of currency and money tokens to settle transactions which, under normal stimuli, might be undertaken by citizens and call for settlement. It is perhaps understandable that the harassed housewife whose present troubles express themselves in the problem of

less money available for spending now than was available formerly, should be easily led to believe that the trouble is therefore a monetary one. The fact remains, however, that it is an unworthy and cruel procedure to play on uninformed judgment and beliefs, in an endeavour to secure support for meretricious currency schemes. The problem is an intricate one, and cannot even be stated, much less considered for remedy, without a considerable previous study of national economies. The simple view that, as our troubles are a shortage of money, we must remedy them by manufacturing more money, is as intelligent as that of the untutored savage, who, if we may picture him as possessing a clock and discovering that he has been deceived by the hands of the clock pointing to the wrong time, believes that the remedy consists in doing something to the hands of the clock.

### **(3) Banks and Currency in New Zealand.**

#### **(a) Definition.**

The term "currency" is used in this chapter to mean and include any recognised medium for the settlement of transactions between parties to those transactions. In this country such settlement is effected by the use of coins and various forms of paper money. The coins in use are issued by the British mint to the New Zealand Government and from it silver or bronze coins can be purchased at face value by bankers or other persons who can deliver in return a recognised equivalent in value.

Our paper money takes the form firstly of bank notes, which are promissory notes payable on demand under conditions fixed by public statute, secondly of cheques, which are "on-demand orders" issued on bankers by persons who have accounts in the banker's books recording available credits in the names of such persons, and thirdly various forms of bills of exchange which at maturity are met, mostly by being "taken up" by the bank notes, coins, or cheques, or by being debited to the account of the person liable to

pay the bill, in conformity with a request so to do, minuted on the bill itself.

The use of coins needs no description. They are tokens, accepted without question at an agreed value, and, according to our business habits, they flow continuously like a stream towards the receiving tellers' counters in our banks, whence, across the paying tellers' counters they are again issued in exchange for cheques or bank notes to those who desire to use them for convenience in settling small transactions.

Our bank notes are similarly used. They are paid across the paying teller's counter in exchange for "on demand" orders, known as cheques, which are issued by owners of recorded credit in the books of the bank. (From the present point of view, borrowers by overdraft who also present cheques to obtain notes, are, quite soundly, looked upon as mere temporary substitutes for other citizens who have recorded credits or other wealth in the hands of the bank, which they do not desire to call upon for the time being).

#### **(b) The Ebb and Flow of Currency.**

The notes thus issued are used to settle comparatively small transactions and they inevitably tend to flow back to the receiving tellers's counter at the bank. Every note whilst outstanding is recorded in the bank's books and appears in its balance sheet as a temporary liability—"Notes in Circulation." On its issue it involved a corresponding deduction from another liability in the bank's books, viz., "Current Accounts," by being debited to the account of the customer who drew the cheque which was cashed. When the note comes back to the bank, it is debited to "Notes in Circulation," cancelling out the entry made on its issue and the corresponding credit (if paid to a customer's account) involves an increase in the liability "Current Accounts." If, when it comes to the bank it is exchanged for silver and bronze coins, the credit is to "Coin and Bullion Account," reducing the balance of that asset account.

Thus, when a note has been issued and has returned to the bank it involves firstly a credit and then a debit to "Notes in Circulation Account," one entry cancelling out the other, and the note becomes a cancelled token unrepresented by any entry in the bank's books, and with no place at all, either as asset or liability, in its balance sheet. On its issue, the bank's liability on "Current Accounts" was reduced; on its redemption at the bank, either some other "Current Account" is correspondingly increased, or the asset "Coin and Bullion" is correspondingly reduced.

**(c) Cheques as Currency.**

The functions and operations of cheques as a part of our currency are simple in the extreme. As we have seen, they are drawn by persons, in whose names are recorded available credit in the books of the banks. The presentation of the cheque at the bank on which it is drawn effects a reduction in the balance of credit available to the drawer and an increase in the recorded available credit of the person who lodges it. It thus effects merely a transfer of recorded bank credits. If it is paid in by the original payee it effects the settlement of a single transaction on its journey to the bank. It may, however, pass through a dozen hands and act as the medium of settlement of a dozen transfers, on its journey between its issue and its lodgment in the bank.

In Chapter IV, at page 155, the legal sanctions behind and the restrictions upon the issue of bank notes by the trading banks are dealt with and described. In Chapter XII, dealing with the Reserve Bank of New Zealand is a description of the status of the note issue of that institution. It is an inconvertible legal tender note issue within New Zealand, and it is convertible into English sterling at current rates of exchange from time to time for all external transactions.

From 20 to 25 per centum of our trading transactions in New Zealand are settled by the use of bank notes and coins and from 75 to 80 per centum by the use of cheque

and other forms of bills of exchange. Our currency problems are thus comparatively simple and the basis of our note issue is and has been so simple and so sound that our troubles in our various economic crises, including the debacle of 1930-1934, have never been and are not appreciably monetary or currency problems. To the extent to which they are traceable to monetary and currency causes they have operated outside this country, and reach us and affect us per medium of our exchange settlement system with London.

Transactions relating to our overseas' trade are settled by some form of bill of exchange and we shall in the next part of this chapter give attention to these instruments, their functions and use.

#### **(4) The Banker and His Customers' Foreign Trade.**

##### **(a) Definition.**

By the term "foreign trade" we mean the trade that a bank's customer may have outside his own town or outside the zone where he can conveniently settle transactions with his own cheque. Our present heading will lead us to consider the use of the banks' facilities for effecting payment by a bank's customer in distant parts of his own country or in other countries. Sometimes when making a settlement in his own country he will use these facilities of the bank rather than issue his own cheque, where, from the nature of the transaction, it is essential that he should tender a document of unimpeachable value and standing to fulfil the terms of that precise transaction.

##### **(b) The Bank's Facilities.**

The bank's facilities for transactions of the kind we are now considering can be classified under five headings, indicated by the following services and facilities:—

- (1) Telegraphic transfer;
- (2) Internal remitting warrant transferring funds to payee's credit;

- (3) The issue of a bank draft;
- (4) The issue of a letter of credit;
- (5) The bank's services as its customer's agent for the collection of a bill of exchange drawn by the customer on a trader elsewhere.

**(c) Telegraphic Transfers.**

A very considerable amount of the total payments made by traders in a modern business community to those in other communities from whom they purchase, is made by telegraphic transfers. The offer of this facility by banks to the public has been available for very many years past, but there has been for some years past a growing tendency on the part of the business community to make more use of this form of internal, inter-state and international transfer, and now we think it would not be an exaggeration to say that of our total imports, visible and invisible, from Great Britain, 75% is settled for by telegraphic payments. When such a transaction is adopted the banks are paid at this end by an intending importer, and by cable they instruct their London offices to make corresponding payments to the English exporter, thus arranging for practically simultaneous settlement in New Zealand and London. This facility is now largely availed of by all leading importers from England and America. It is used to a lesser degree between New Zealand towns and between New Zealand and Australia. The Banks make no charge for telegraphic transfers beyond the actual cost of the telegram and, of course, the transfer is made at the current rate of exchange for such transfers.

**(d) Remitting Warrants.**

The remittance of funds by means of "remitting warrants" has largely displaced the older method prevalent in years gone by, of applying to the bank for a bank draft when it became necessary for a trader (or other person) to make a payment (otherwise than by telegraphic transfer) in another town or country. The modern practice is far



simpler and more convenient and it is increasing in popularity. In this procedure the person who wishes to make a payment in another place simply pays the amount into his bank in the same way as an ordinary lodgment, but on a special form provided by the bank, reading:—

“Lodged with the Bank of.....to  
be transmitted by post to.....Branch, the sum  
of.....for credit of (here insert name of payee  
and his banker).”

On receipt of this lodgment the bank will comply with the instruction it contains, and will also advise the payee of the transfer, if it is requested to do so. For this service the customer merely pays the current rate of exchange between the two localities, and there is no other charge. In addition to being a much simpler method it is obviously safer than obtaining and forwarding a bank draft through the post.

Travellers who may require to have funds available to them at their place of destination only, do not now need to carry a draft or letter of credit. The amount required can be sent through a bank to the traveller's destination by remitting warrant and there it will be available for him on his arrival. For identification purposes the bank obtains in such cases a specimen signature of the remitter, and forwards it with the warrant. The traveller thus avoids the risk entailed in carrying valuable documents with him on his journey. This greatly improved procedure has largely displaced the method of transfer by means of bank drafts.

#### **(e) Settlements by Bills of Exchange.**

Our remaining headings involve or anticipate the use of bills of exchange, and before dealing in detail with the considerations arising under these respective headings, it perhaps will be useful and interesting to inform or clarify our minds on the underlying principles of these transactions.

The descriptions and explanations usually given in books dealing with bills of exchange and other exchange tran-

sactions, are apt to follow stereotyped lines. Thus, we read that if A, a merchant living in Edinburgh, owes £100 to B, a merchant living in London, and is moved by an old-fashioned desire to settle his debt, he has to consider ways and means by which it may be done. In the days when this class of illustration was put forward, the method of settling it by means of sending a bag of gold coins, which was then possible, was dismissed as being risky and expensive. It was then pointed out that A suddenly remembered that C, another trader who lived in London, owed him, A, £100, and therefore A adopted the ingenious device of drawing a bill of exchange on C in favour of B and sending it to B in London. B thereupon presented it to C for acceptance and subsequently for payment, and when C accepted and paid the bill, both debts, namely A's debt to B, and C's debt to A, were settled.

This is as understandable as a simple problem in Euclid, but many students of the subject have confessed to feeling that it bore just about as much relation to practical business as does the problem in Euclid. Recognition of the value of a bill of exchange for use in such purposes, is largely discounted and submerged in a wonder at the extraordinary coincidence that A was able to find on his books in Edinburgh a creditor who owed him exactly the sum which A owed to a debtor in London, and the mind is left wondering what would happen if this coincidence did not exist and how long A might have to wait before this happy state of things came about.

If the bare theoretical operation of the transaction is grasped, all other difficulties disappear when we remember that modern banking is designed to provide facilities, amongst other things, for settlement of such debts. A, in Edinburgh, does not need to wait for the long arm of coincidence to provide him with a debtor in London whose transaction exactly offsets that of his creditor in London. He may go to his banker, knowing that that banker has an office or an agency in both Edinburgh and London, to say

nothing of Stockholm and Rome, and that these offices as part of their daily business are willing to put through direct transactions between themselves, creating the relationship of debtor and creditor, trusting to the "balance of trade," or finally, if it becomes absolutely necessary, a transfer of gold or other recognised internal or international medium, to make a final settlement. We may shift this illustration nearer home by saying that if a New Zealand farmer wishes to have money available to spend in the United Kingdom when he goes there for a holiday, or if he wishes to have the proceeds of his wool, when sold in London, transmitted from London to Wellington, his banker is willing to give him an appropriate bill drawn in Wellington or London and payable in London or Wellington to meet his requirements. These bills result in the two offices named becoming in respect of this transaction the debtor or the creditor one of the other, and as they are prepared to put through these transactions, and as in the ordinary course of business they actually put through tens of thousands of such transactions during a year, experience shows that, roughly, transactions which make Wellington the debtor of London tend to be offset by transactions which make London the debtor of Wellington. If, over a course of years, the tendency should be one way, so that, let us say, Wellington branch is tending to become more and more indebted to London a settlement may become desirable because London may decide that the limit of its money to be invested or locked up in Wellington has been reached. Two remedies are open for such a state of affairs. The first (largely a theoretical one, only) is to demand a remittance of gold. The other is that the exchange rates between London and Wellington may be altered, so that the class of transaction which would tend to make this balance worse is distinctly discouraged, and the class of transaction which would tend to correct the balance is encouraged. At the time of writing March, 1934, the exchange rate between Wellington and London is approximately 25 per cent. premium on London bills sold in Wellington and 25 per cent. discount on

Wellington bills sold in London. It is true that this is the result of an arbitrary act of the New Zealand Government, in respect of which that Government has indemnified the banks, but nevertheless this aspect may be ignored and the rate being an extreme one affords an excellent example of the corrective instrument we are now considering. This 25 per cent. premium or bonus payable on London bills presented in Wellington encourages every New Zealander who is able to convert his property into cash available for him in London, to put the transaction through. It encourages the utmost production of our primary produce and its shipment to London for sale there, because, for every £100 produced in London by the sale of such produce, the customer is credited with approximately £125 in the books of the banks in Wellington. Conversely, it is common knowledge that this rate is acting as a very effective check and restriction on imports into New Zealand. Every English manufacturer who sends £100 (English value) worth of goods to New Zealand, has to draw on his Wellington merchant for £125 to enable him to collect his required £100 in London, and that £125 has to be paid firstly by the New Zealand importer, and, secondly, by the New Zealand users of those goods. A little consideration will show that by the encouragement thus given of exports from Wellington to London, and the corresponding discouragement of exports from London to Wellington, the tendency must be for the indebtedness of Wellington banks to their London offices to be greatly reduced, or perhaps for the Wellington banks to be building up credit balances with their London offices.

**(f) Issue of Bank Drafts.**

This is a banking facility that is frequently availed of by the commercial and travelling public.

A bank draft may be defined as an order to pay a sum of money to or to the order of a specified person; the order being addressed by one banker to another banker,

two branches of a bank being, for the purpose of this definition, viewed as separate banks. A bank draft is very like a bill of exchange and possesses many features of that document. When drawn by one bank on another bank, it is a bill of exchange, but when drawn by one branch of a bank on another branch of the same bank it is not, for it lacks one essential element, it does not possess as two separate parties, the drawer and the drawee. The statutory definition of a bill of exchange includes the requirement that it is an unconditional order addressed by one person to another, and seeing that, for instance, the Bank of Australasia is one person or party, an order addressed by the Melbourne branch of that bank to the Auckland branch cannot be said to be addressed by one person to another. Subsection (2) of Section 3 of the Bills of Exchange Act enacts that an instrument which does not comply with these conditions is not a bill of exchange. This exclusion of the bank draft from the category of bills of exchange has several far-reaching effects on the rights and remedies of the holders of these instruments and of banks who act as agents for the collection of bank drafts. At the beginning of the present century, the pronouncements by the English Courts of the ruling that a bank draft drawn by one branch of the bank on another branch was not a bill of exchange, and the application of that principle to the facts of certain cases, revealed such hardships, particularly to banks which had built up certain customs on the contrary belief, that legislation was thereupon passed and adopted throughout the Empire to meet some of these difficulties. It is therefore enacted by Section 60 of "The Bills of Exchange Act, 1908," New Zealand, that for the purpose of that Section a draft issued by one branch of a bank and payable at another branch of the same bank shall be deemed to be a bill of exchange. That Section enacts that when a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays it in good faith and in the ordinary course of business, it is not

incumbent on the banker to show that the endorsement of the payee, or any subsequent endorsement, is genuine, and the banker is deemed to have paid the bill in due course even though such endorsement may prove to be forged or made without authority. This special protection for bankers is a recognition of the fact that in the very nature of things the banker's business requires him to pay promptly and on presentation bills of exchange drawn on him on demand, and it would throw an impossible task on him to require him to verify the accuracy and genuineness of all endorsements on such instruments. If, therefore, he acts in good faith, and the endorsement purports to be correct, he is protected against the results of a forged or an unauthorised endorsement. For the purpose of this protection, a bank draft payable on demand is deemed to be a bill of exchange. Then again in Sections 76 to 82, inclusive, of "The Bills of Exchange Act, 1908," defining various crossings that may be placed upon cheques, and their effect, the Statute prescribes protection for collecting bankers who, acting for customers, in the ordinary course of their business, and without negligence, collect cheques which may subsequently prove to have got into unauthorised or fraudulent hands. The protection briefly is that the banker who acts under the above conditions will not incur liability to the true owner of the cheque merely because he acted as an agent for the collection of such instrument.

Section 83 provides that a banker carrying on banking at more branches than one, shall, for the purpose of Sections 76 to 82 thereof, be deemed to be an independent banker in respect of each of such branches. This provision would apply, it is submitted, to a demand draft issued by one branch of the bank on another branch of the same bank. Such an instrument is, in effect, a banker's cheque, for it is an unconditional order to pay drawn on a banker payable on demand. Apart from these two special provisions, however, the general rule stated above must stand; a bank draft is not a bill of exchange.

A bank draft might be used by a customer of a bank in New Zealand wishing to make a specific payment to a known party in another part of New Zealand. In effect, if his cheque were ultimately honoured, the same transaction could be carried out by means of that customer's cheque. If the customer's credit is undoubted and known to be so by the party to whom he proposes to make the payment, there is no advantage in the bank draft, the customer's cheque would serve the purpose just as well; but if, in making the payment, he desires certainty and conclusiveness of settlement of the debt to be apparent to the recipient immediately on the receipt of the instrument, he would ordinarily send a bank draft. It is the appropriate form of making a payment of a specific sum required to be made to a specific party, and acceptable without doubt or hesitation. It is the form of instrument that ordinarily fulfils these conditions where the parties reside in different countries.

A draft may be payable on demand or at a fixed or determinable time after presentation to the drawee. The customer waiting on his bank to procure such a draft is in effect a purchaser; he purchases from his bank by his own cheque or by cash the banker's cheque or term bill payable in another country, and, as pointed out in our general remarks preceding this heading, it is part of a bank's system to have bankers as agents in all parts of the world, with whom arrangements have been made to pay such drafts.

In New Zealand, the form of a bank draft is that of a bill of exchange,—“Please pay to..... the sum of £.....” In England it is usually in the form of a Promissory Note,—“Seven days after sight hereof I promise to pay.....,” and this promissory note is made payable at the bank where the purchasing customer requires it. Gilbert, the famous English lecturer and writer on banking matters, makes an interesting comment on this form of the English bank draft, based on its history. He says that the custom of making a draft payable seven days after sight arose in the old coaching days and

was designed to defeat the highwaymen by giving the robbed victim seven days to get notice to the banker on whom his draft was payable, informing him of the robbery, and countermanding payment.

The bank draft is frequently used by travellers when, on making their arrangements to have money available in another country, it suits their convenience to have the money made payable at one place in one sum. Where a traveller wishes to have money made available to him on his travels at various places from time to time, the letter of credit (q.v.) is the more convenient form.

A draft issued by one bank on another bank, if in the ordinary form, is a bill of exchange, and the law and procedure of bills of exchange are applicable to it. If it is payable on demand, the paying banker is not affected by it until it is presented to him for payment, and he then discharges his obligation by making payment. If it is payable after sight or after a given date, it is, until presented to him for sight and acceptance, an unaccepted bill of exchange. When he has accepted it he is then liable originally to the payee, and if it is payable to the payee or order the maker's liability extends to any transferee by endorsement. These points are made clear by a New Zealand case, *Cohen v. The Bank of New Zealand*, 1 Mac., page 620. The facts were that one Symms had received advice that he was to get a legacy under the will of a relative who had recently died in India. He purported to assign his rights thereunder to one whom we may call M, and M gave notice of this assignment to the bank. The bank informed M that they could take no notice of the assignment, that they had no knowledge of the transaction, and that there was nothing in their hands capable of assignment. Some time after this, they received from the Oriental Banking Corporation at Calcutta a draft for £243 accompanied by instructions that this represented a legacy payable to Symms under the will of his late uncle, and directing the Bank of New Zealand, Dunedin, to hand the bill over to Symms and to



procure from Symms a receipt exonerating the Administrator-General at Calcutta from any further liability in respect of the payment. The bank acted according to its instructions, handed the draft over to Symms on obtaining the necessary receipt, and Symms promptly presented the draft for payment, and received payment. The assignee subsequently learned of this transaction and he sued the bank, but it was held that the bank owed no duty to him whatever; the bank knew nothing of the transaction till the draft came into their hands, and it was then placed in their hands by the Oriental Banking Corporation at Calcutta, and the Dunedin bank then held that draft solely as the agent of the Calcutta bank and was under an obligation to carry out the instructions of its principal. Until that draft was handed to Symms, there was no debt existing between the bank and Symms, and therefore nothing capable of assignment.

Whilst it is not a common transaction, it happens from time to time that a draft is thus forwarded direct to the paying bank for delivery to the intended payee, and it should be noted on the authority of this case that in these circumstances the recipient bank is the agent of the remitting bank and performs the duties of this agency by handing the draft over to the payee. As pointed out above, the paying bank has no obligations or liabilities under the draft until the draft is presented to it for acceptance or payment as the case may be.

**(g) Letters of Credit.**

A bank letter of credit may be defined as a written request or direction addressed by one banker to another banker or person requesting the addressee to give credit to the person named in that behalf in the letter of credit. The simplest form, which nevertheless contains the essentials, could be set out in words such as "Please honour drafts of John Joseph Smith to the extent of £500 and charge same to this bank."

A letter of credit might be sought by an intending traveller who hopes and intends to present it, and drafts drawn under it, to various agents of his banker on the route of his travels. Thus, John Joseph Smith, intending to travel through Europe, and procuring the letter of credit known as a circular letter of credit, the essential wording of which is given above, could present his letter of credit to ten bankers in succession during his travels through Europe and cash a draft for £50, obtaining its foreign equivalent from each of them.

A letter of credit addressed to one banking office only, is generally known as a "domiciled letter of credit"; one addressed to a number or series of banking offices is known as a "circular letter of credit." The letter of credit spoken of above, unconditionally accrediting the bearer, is known as a "clean letter of credit." The authority to honour the bearer's drafts is clear of any conditions or collateral advantages for the protection of the issuing banker. This leads us to consider what is known as the "documentary" letter of credit; this is a letter of credit which places a condition on the instruction and authority to honour the drafts of the accredited person. The most usual form of this condition or restriction is a stipulation that these drafts are to be honoured only if accompanied by invoices, bills of lading, shipping documents and other mercantile titles to goods to an amount covering the amount of the required draft. Where a letter of credit is issued in this form, it behoves the banker acting upon it to be careful to see that he complies with the stipulations contained in it, otherwise he cannot rely upon the guarantee or indemnity expressed in his favour by the issuing banker. The documentary letter of credit is in the form most commonly required and used by the mercantile community. It is frequently used by a trader who wishes to try out a transaction in a new market, or with parties with whom he has not previously done business. It is an evidence of financial stability and good faith. Thus, a merchant in New Zealand desirous of opening

trade relations with a manufacturer in Japan, is properly desirous of doing so on a basis that will leave no doubt in the mind of the Japanese manufacturer in the matter of his financial soundness. He anticipates making purchases in Japan to the extent of say, £1,000, and he therefore waits upon his banker, explains his intentions, and asks that a letter of credit amounting to £1,000 be issued to him. The banker will sometimes require the merchant to transfer £1,000 to a "Letter of Credit Account." This is an account opened with this sum of £1,000 specifically earmarked to meet bills drawn by the Japanese manufacturer. The banker then hands to his customer a letter of credit addressed to some principal agent in Japan, setting out the name and description of the New Zealand merchant and undertaking that all bills of exchange drawn on that merchant to amounts not exceeding in the aggregate £1,000, will, if quite regular in form and accompanied by documents of title for goods (to an equivalent value) shipped to that merchant, be duly honoured on presentation at the bank in New Zealand. The letter of credit is sent forward to Japan and enables the Japanese merchant to undertake the transaction with his mind quite at ease on the question of payment, and further enables him, without difficulty, to negotiate any Japanese bills drawn in accordance with the letter of credit.

#### **(h) Letters of Credit Inward.**

Quite apart from the letters of credit issued by New Zealand banks to their importing or travelling customers, the banks have large dealings under what are known as letters of credit inward, that is to say letters of credit issued outside of New Zealand to cover purchases in New Zealand of wool, meat and dairy produce, etc., by the agents of British and foreign buyers. The usual form of these credits authorises the bank on whom the credit is drawn to negotiate the drafts of the New Zealand agent of the British or foreign principals up to a total fixed sum, provided the drafts are accompanied by the usual shipping

and insurance documents for the goods shipped in terms of the credit. Usually a rate per lb. (or other unit) is quoted in the credit beyond which the agent cannot draw. An important feature of many inward credits is what is known as the "Red Letter" Clause, because it is printed in red. This clause authorises the bank to make advances on overdraft to the agent prior to shipment, against store warrants for the relative goods. The need for this authority arises from the custom that the agent purchasing wool, meat or dairy produce, etc., is expected to take delivery and pay for the goods purchased within a certain limited period. If, however, during that period he is unable, owing usually to want of shipping facilities, to ship the goods and so be in the position to negotiate his draft on his principals with bills of lading, etc., attached, he would be unable to meet his commitments to the seller of the produce on the date fixed. It is to get over this difficulty that the "Red Letter" Clause is required, and it is a clause under which considerable temporary advances are made by banks during the produce export season. It is necessary for banks to observe most carefully the instructions regarding store warrants and insurance of the goods, as the safety of their advance depends on such strict observance.

**(i) Negotiation of Overseas' Bills of Exchange.**

Readers who are not acquainted with the terms in use and the practice adopted in relation to bills of exchange, are referred to that heading in Chapter IX of this work.

Under the immediately preceding heading it is stated that a trader in one country, intending a trial transaction or adventure with another country, or dealing with traders with whom he has not established a course of dealing, might be expected to require a documentary letter of credit necessary to ensure the settlement of the debt arising out of those transactions. We propose now to deal with the course adopted by traders who are able to dispense with the bank's guarantee or indemnity in the matter and by

reason of reciprocal experience and transactions, or probably by reason of a mere trade introduction, are able in dealings between recognised and established markets to effect settlement by direct use of bills of exchange. The best illustration will be afforded by adopting the figures and descriptions of a transaction which appears in the daily press on the day of writing this paragraph. A contributor to this morning's newspaper quotes, as the facts underlying a submission he wishes to make as to the effect of some of our recent legislation, a shipment of cutlery which his firm has just received from Sheffield invoiced at £1,035. It was probably reasonable to assume that this is a transaction between parties that had been carrying out similar dealings for several years. The Sheffield merchant or manufacturer has, in fulfilment of the order from the Wellington merchant, packed his goods and got them all ready for despatch by steamer. To procure payment, he draws a bill of exchange for £1,035 on the Wellington merchant, whom we shall call W.M. This bill is addressed to W.M., and it reads: "Sixty days after sight hereof pay to the order of the Midland Bank, London, the sum of £1,035, value received." To this he attaches a copy of the invoice and bill of lading received from the Shipping Company for the case of goods, and the insurance policy or cover note which he received from the Insurance Company which undertakes to cover the goods against marine risks during transit. This bill in London in the ordinary course of reciprocal banking exchanges will find its way into the London branch of the Bank of New Zealand, and the London branch will send it out to the Wellington office of that bank. The Bank of New Zealand is in the matter an agent for the Midland Bank, London, which has used this agent because it has no branches of its own in New Zealand. The bill being drawn on W.M. attaches no legal liabilities or obligations to him until he has accepted it. It is the duty of the Bank of New Zealand in Wellington as the agent of the Midland Bank in London, therefore, to present this bill to W.M. in Wellington for acceptance. The

bills department of the bank in Wellington deputes a clerk on its staff to wait on W.M. with the bill. In the ordinary course of events, W.M. signifies his acceptance of the bill by writing on it "Sighted this.....day of.....1934, Accepted payable at the.....Bank, Wellington," and by signing his name to this minute. The whole purport of this procedure is, by one and the same transaction, to protect the Midland Bank which in London either has credited or still has to credit the Sheffield manufacturer with the amount of his bill, and at the same time to facilitate the uplifting of the goods by W.M. who cannot expect to be allowed to obtain them until he has either paid or undertaken to pay the amount of the manufacturer's account. The precise procedure to be adopted in this case will be governed by the instructions that have accompanied the papers. These papers, as we have seen, comprise documents of title to the goods which are attached to the bill. If W.M. is a man of standing and known to the manufacturer or the bankers, it is almost certain that the instructions will be that the documents are to be handed over to him on the acceptance of the bill, and W.M. is thus enabled to land the goods and take possession of them. It may be in some cases that the consignee-acceptor would be required to give security for due payment of the bill at the expiration of sixty days before he could obtain the shipping documents. In either event, with a bill at sixty days sight, the Bank of New Zealand would hold the bill until maturity, and then, still acting as agents for the Midland Bank would present it for payment, and when paid would remit the proceeds to London for their principals, the Midland Bank. Sometimes such a bill will be drawn payable in Wellington, not at sixty days' sight, but on demand or at sight. In such case the bill is originally presented to W.M., not for acceptance but for payment, and the instructions would certainly be that the documents of title to the goods were not to be handed over except on payment of the bill. The instructions of the principals

(Midland Bank) to the Wellington agent (the Bank of New Zealand) would include instructions as to the procedure to be adopted in the event of default on the part of W.M. It sometimes happens that before the goods and documents arrive at this end, the consignee is bankrupt or otherwise incapable of taking up the transaction; it may be that he is temporarily unable to finance the goods; and the instructions given cover all these contingencies. The bank may in such cases store the goods and hold them; they may sell them and remit the proceeds; they may even ship the goods back again, or they might ship them to another market.

**(j) Referee in Case of Need.**

In actual practice the English exporting houses usually have an agent or representative in New Zealand or Australia who has general instructions from them to watch their interests in the event of any hitch or delay in the acceptance or payment of a bill drawn by them on a drawee in New Zealand. Where such an arrangement has been made it is customary for the English drawer to attach to his drafts, drawn on New Zealand firms and companies, a memorandum containing a request addressed to the bank to refer to such local agent or representative, "in case of need," and to accept his instructions. This referee, or "case of need" as he is popularly called, on receiving notice from the bank that, on presentation, an acceptance has been refused, or a bill dishonoured at maturity, will take the matter up and give the necessary instructions to the bank. He may himself take over the goods and pay the bill, or he may attend to the disposal of the goods, selling them by private treaty or by auction, or even, if thought desirable, transhipping them to another place. He undertakes the collection of the proceeds, however the goods may be disposed of, and he remits them to his principals.

**(k) Noting and Protesting.**

This procedure is dealt with in Section 51 of the Bills of Exchange Act; it is the appropriate procedure to protect

the interests of the drawer or other foreign party to a bill drawn outside New Zealand on a New Zealand trader, or other drawee. The procedure might be described briefly and with sufficient accuracy as being the first step in international procedure for bringing and maintaining an action on a bill of exchange between parties who are resident in different countries.

When a New Zealand drawee of a bill meets the bank's presentation of it to him by a refusal to accept the bill, it is said to be dishonoured by non-acceptance. When, having been accepted, payment is refused at maturity, it is said to be dishonoured by non-payment. In either case the bill, if a foreign bill, should be noted on the day of dishonour.

Noting consists of taking it to a Notary Public, who is an official, domiciled here, but having a commission which permits him to take evidence on oath receivable in other countries. A clerk from the bank will call on the Notary Public and hand the dishonoured bill to him. The Notary then himself presents the bill to the drawee, and if it is again dishonoured this fact is recorded on the bill by an official note to that effect made by the Notary. This act of "noting" is a preparatory step towards the protest.

A protest is a formal document containing a copy of the bill duly signed by the Notary Public formally setting out the facts of presentation, demand for acceptance or payment as the case may be, and the answer (refusal) tendered by the drawee or acceptor.

Whilst noting must be done on the day of dishonour, the protest can be done at any time later. It is a common practice for English exporters to attach to their bills an instruction to the bank "not to incur expense" in connection with the presentation of the bill. Unless such instructions are attached, the banks will, if the bill be dishonoured, note it, the cost of this procedure being about 5/- only, but they then refrain from adopting the more expensive pro-



cedure of protesting until they receive specific instructions to do so.

A protest, under the hand and seal of the Notary will be received as evidence of the dishonour in the country in which it was drawn, that is assuming that it is within the Empire. If that country were a foreign country it would probably be necessary to procure from the consul of that country in New Zealand, the equivalent, according to the law of his country, of the "protest."

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## CHAPTER VI.

## ADMINISTRATION OF BANKS.

It will no doubt be of some interest to readers of this volume and to banking students generally to learn something of the internal administration of the banking institutions operating in New Zealand, and of the duties devolving generally upon the various executive officers, and upon the many departments under their control. Incidentally some idea may be gained of the wide ramifications of business operations which are included in the term "Banking," and also a clearer idea of the service rendered to the community by the banking institutions of New Zealand.

**(1) Directors.**

The only bank operating in New Zealand which has its Head Office in New Zealand and is controlled by a locally-appointed Directorate, is the Bank of New Zealand. Of its six Directors, four are appointed by the Government of New Zealand, and two are elected by the shareholders. There is a small London Board of Directors appointed by the New Zealand Board, and Local Directors in Sydney and in Melbourne are also appointed by this Board. The members of the Chief Board meet at Wellington, usually fortnightly, and those of them who are resident in Wellington meet daily. The Chief Board controls the general policy of the bank, all matters of importance are reviewed by them and they are kept very closely in touch with the bank's operations.

The only other bank with its General Manager's office in New Zealand is the National Bank of New Zealand Ltd. . . The National Bank is a London bank with its Head Office and Directorate in London, but its General Manager resides in New Zealand and has wide powers in controlling his bank's business in the Dominion.

The Union Bank of Australia Ltd. and the Bank of Australasia also have their Head Offices in London, but the General Manager of the Union Bank is stationed at Melbourne and in the case of the Bank of Australasia the Chief Executive Officer, the Superintendent for Australia and New Zealand, is also resident in Melbourne.

The Head Office and Directorate of the Bank of New South Wales are at Sydney, and those of the Commercial Bank of Australia Ltd. at Melbourne.

The control of the New Zealand business of the Union Bank of Australia Ltd., Bank of Australasia and Bank of New South Wales is in each case under an Inspector appointed by the Head Office of the respective banks. In the case of the Commercial Bank of Australia Ltd., the Manager at Wellington is also Attorney for his Bank in New Zealand.

## **(2) General Managers and Inspectors for New Zealand.**

The Chief Executive Officer of a Bank carries on his shoulders a great responsibility. Whilst his decisions on major matters are subject to the control of his Board, who direct the general policy of the bank, he is the bank's guiding genius and the Board's expert adviser on all matters pertaining to the higher branches of banking and finance. It is through his eyes that most of the proposals and applications which come before the Board are viewed, and on his recommendation that they are approved or declined. Apart from loan proposals, always a subject for anxious and careful consideration, there arise such matters as investment of funds, exchange rates and the position of the London funds, the constant watching of the relative position of deposits and advances, and consequent consideration of rates of interest. Again there is the important matter of new branches and staff changes, an ever-recurring part of the administration which is almost completely the responsibility of the Chief Executive Officer. There is no doubt that on the ability of its Chief Officer depends to a large extent the soundness and progress of the institution

over whose business he exercises so large a measure of control. During these last few years particularly, General Managers and the Inspectors for New Zealand of the Australian Banks have had a heavy burden of responsibility and have carried out their great trust with conspicuous ability and strength of purpose.

### **(3) Inspectors and Sub-inspectors.**

A highly important branch of the banks' administration is that undertaken by their inspecting officers. Each bank has its staff of Inspectors and Sub-inspectors, whose duties are confined to inspection and internal audit of the books of that bank's branches. Each branch is inspected at regular intervals, the inspection being a very complete one, covering all cash and books of account, securities and advances, and a report on the work of the individual members of the staff, and on the business of the branch generally. By this means the Head Office of the bank is kept closely in touch with the work of each branch and each branch is made to realise that it is kept closely under the eye of its Head Office.

Apart from the travelling Inspectors, each Head Office has Inspecting Officers attached to it under whose review and careful consideration come all loan proposals and staff and other matters which branches refer to their Head Office. These officers, usually chosen after some years of successful experience as Branch Managers, relieve the Chief Executive Officers of most of the routine and lesser matters, and deal with the smaller loan proposals which are referred to Head Office. They also examine and criticise larger proposals sent forward, and so materially assist and lighten the work of their chiefs. Each Inspector or Sub-Inspector at Head Office has his clearly defined work, and deals with the affairs of particular districts whose branches he supervises, or he may be in charge of staff matters, foreign business, premises, or a combination of one or more of these departments. On the ability of these assistants of the Chief Executive Officer the smooth running of the administrative side of banking

operations materially depends. These officers represent a very important "buffer state" between the Branch Manager and his General Manager or Chief Inspector—and deal with most of the correspondence between branches and Head Office.

It is the duty of these officers to scrutinise the weekly and monthly reports on all advances, to watch closely any advances which appear to be unsatisfactory, or in respect of which the arrangements originally made are not being carried out; to supervise closely all bad and doubtful loans, and generally to act as watch-dogs sedulously guarding the bank's interests.

#### **(4) Head Office Accountant's Department.**

This is the central accounting department of the Bank. To this department come all the Branch Returns from which the Bank's records are obtained and amalgamated. It is this department which is responsible for the production of the Bank's Annual Balance Sheet and Profit and Loss statement placed before shareholders at the Annual Meeting, and which prepares the Quarterly Returns for the Government. The recording of the multitudinous transactions with Foreign Banks and Agents, as well as the control of the accounts between the numerous branches of the Bank itself is also in the hands of this department. The accounting work connected with stationery, notes, coin imports and exports, shares, produce department, premises, investments, exchange settlements and Head Office expenditure all pass under the review of the Head Office Accountant, and this position requires ability, clear-headedness and wide experience in the officer chosen to fill it.

#### **(5) Share Department.**

The shares of the Banks are very widely held, and the average holding of individual shareholders comparatively small. Bank shares have been amongst the soundest investments on the share markets of New Zealand and Australia

for many years; they are listed and quoted on the stock exchanges, and the market for them is a very active one. Consequently the share department is a very live section of Head Office administration. When it is realised that there are some 7,000 shareholders in the Bank of New Zealand, and over 4,600 in the National Bank of New Zealand, Ltd., the two New Zealand institutions, some idea can be obtained of the amount of work entailed in keeping in touch with so great a number of individuals. Incidentally also these numbers indicate the comparatively small holdings into which the shares of Banks generally are divided amongst the investing public. It brings home the fact that the "Banks" are really but a vast number of private individuals, mostly of modest means, who have chosen Bank shares as the form of investment for their capital.

#### **(6) Produce Department.**

The Banks include in their services to their customers the handling and sale of produce in London, and this service entails the setting up of facilities both at this end and in London for handling all classes of produce, including wool, meat, dairy produce and hemp. Fruit, however, is handled by the Fruit Export Control Board. Whilst the Banks make use of local shipping stores at this end and sell through recognised brokers in London, their control of the produce from the time it comes into store ensures that the interests of the producer are in good hands. The Banks also supervise and control the sale of wool for their customers when it is sold at the local sales in New Zealand.

#### **(7) Staff Department.**

A great responsibility rests on the Chief of this department and his staff. Once a year each branch manager reports on each member of his staff, and each time the branch is inspected a further report is made. These reports are carefully filed and referred to when any question of promotion or transfer is under consideration. •It is the Staff

Inspector who makes recommendations and brings promising officers under the notice of his General Manager. The movement of junior officers is chiefly left in his hands. The Bank's attitude in cases of sick leave, marriage, transfer on account of the health of an officer or of his dependents, minor and major breaches of regulations, and arrangements for periodical leave for each member of the staff, all come under the consideration of the executive officer of the Staff Department. It is necessary for him to possess qualities of firmness, knowledge of human nature, and tact, combined with a genuine desire to deal with the staff on the basis of personal merit only—a desire not easy to satisfy, even if the will be there. It is practically impossible to weigh up the relative merits of the members of a large staff so as to avoid apparent cases of injustice. The most that can be hoped for is that such cases be as few as possible, and that merit shall be overlooked for a temporary period only.

The Pension Fund, to which the Bank and the staff jointly contribute, and which provides each member with a pension on retirement, constitutes a strong binding link between the officer and his Bank, and gives him a feeling of security for the future and an added loyalty to his institution.

#### **(8) Premises Department.**

In the case of an institution having some hundreds of branches scattered over a wide area, the officers controlling this department absorb in the course of their duties a considerable knowledge of architecture, plumbing, gas and electrical equipment, fittings and furniture, including household furniture required for officers' residences. There is a constant stream of correspondence from branches concerning the upkeep of premises, to say nothing of the work entailed in connection with the erection of new premises, the original plans for which are drawn by the Bank's architects. These plans are subject to careful overhaul by the Bank's experts, both with the object of reducing cost and increasing the

efficiency and suitability of the premises for banking purposes. In a great number of cases, the Bank's premises include residential quarters for one or two officers who sleep on the premises, though in the city branches provision is usually made for a resident caretaker. All equipment is in such cases provided by the Bank. From this outline it can be seen that this department has wide ramifications, and its economical and efficient administration is of material importance to a bank.

#### **(9) Stationery Department.**

The amount of stationery annually used by a large banking institution is enormous. Bank ledgers and books generally are of an expensive and solid type. The volume of a Bank's correspondence is very great and entails the use of large quantities of stationery. The number of lodgment slips, etc., and cheque forms used annually run into many millions. Pens, ink and blotting paper, pass-books and the voluminous return forms are important items of expenditure. The work of keeping each branch adequately but not over supplied with its requirements keeps the stationery department busy throughout the year. The annual turnover is a large one and this requires skill and knowledge on the part of the officer in charge. The banks expect to be supplied with stationery of good quality and the responsible officer must firstly be an expert in judging the quality of paper and other materials, and secondly display good taste in design and printing. He must also show good business qualities in entering into his purchasing transactions.

#### **(10) Branch Managers.**

So far as the public is concerned, more particularly that portion of the public who require to borrow money, the branch manager is the most important member of the Bank's staff; he is the point of contact between the executive and the customer. He is the business getter of his institution—and sometimes the business loser. He is the target



at which the customers shoot when they have a grievance, and at which Head Office shoots when anything goes wrong in the administration of his branch. His duties require that he have a good knowledge of values of land, stock, shares, etc., some knowledge of accountancy and law, including that concerning local bodies, companies, partnerships, trustees, bills of exchange, bills of sale, and that he should have a still better knowledge of human nature. Firmness, tact, courtesy, and a desire to be of service both to his Bank and to its customers are also requisite to his success. He must be neither an optimist nor a pessimist, for an optimist lends too freely and a pessimist hesitates to lend at all! He should be a good "mixer," but not a popularity hunter, and, contrary to accepted opinion with regard to bankers, a capacity for sympathetic understanding of his customers' difficulties will make him a better banker. To be of full service to his Bank and his customers he must keep in touch with the affairs of his community and of his country and with world movements generally, especially in so far as they affect finance and trade. The country manager can be a useful friend to his customers if he sees to it that his opinion and advice are founded on a sound basis; and the city manager should have his finger on the business pulse of the community and be alive to any movement which may affect it for good or ill.

#### **(11) Branch Accountant.**

Next to tellers, the customers of the Bank come most into contact with the accountant, who deals with those many matters which are not quite important enough to occupy the attention of the manager. The position of accountant is an excellent training ground for the more important position of manager. The accountant is responsible for the smooth running of the office, and has control of the staff. He must have a thorough knowledge of every branch of office routine, and must see that the work of every department is kept up to a high standard. If he can build up a reputation as an

able accountant in a busy office, he will not have long to wait for deserved promotion to larger responsibilities.

#### **(12) Bill Department.**

This department, especially in the cities, is the one with which the Bank's importing and exporting customers are daily in contact. It may be said that practically the whole of the Dominion imports and exports pass through the hands of the bill departments of the Banks in the form of shipping documents attached to bills of exchange. The head bill clerk requires to have a wide knowledge of shipping regulations, bills of lading and marine insurance policies, and rates of exchange, to say nothing of the intricacies of the Bills of Exchange Act. Through his hands pass the buying and selling of London and Foreign Exchange from and to customers, and many are the troubles of importers over such matters as the non-arrival of shipping and other documents, which he is called upon to smooth out. His department also attends to the issue of the various forms of letters of credit, which the banks issue to facilitate their customers' importing operations, or to meet the needs of travellers in or beyond New Zealand. The discounting of local traders' bills is also the work of this department, but this feature has diminished in importance in recent years owing to the great decrease in the number of bills given by retailers to their merchants as compared with the number so given a few decades back. An able bill clerk is an important unit in a Bank's staff.

#### **(13) General.**

It is, we think, unnecessary to deal in detail with other departments of a branch Bank. Correspondence is heavy and requires the work of a number of typistes. The work of the tellers comes more under the notice of the public than that of any other department, and it is needless to say that absolute accuracy, quickness, cool-headedness and courtesy are the essential equipment of a capable teller.

The ledger keepers also have very definite responsibilities, a failure to realise which will bring them, and possibly their institution, into serious trouble. The junior staff who deal with a mass of routine such as bank exchanges, detail books, drafts, remittances, pass books, collection of orders, and general messenger work are all trained from their first day in the Bank (on which they execute a solemn deed of secrecy) to accuracy, neatness, discipline, courtesy and alertness. There is little doubt that the general training obtained in a well run banking office is the best that can be obtained in commercial life, and the degree of integrity and conduct demanded is of a high standard.

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## CHAPTER VII.

## OVERDRAFTS AND SECURITIES.

## (1) General.

In dealing briefly with that highly important function of bankers which consists of "lending on overdraft"—or, in other words, allowing a customer to overdraw his current account up to a specified amount, or limit, it is desired in this chapter to give merely a brief outline of the usual conditions and security (if any) under and against which such loans are granted. Whilst dealing in a general way with the class of security usually acceptable to a banker in New Zealand, and also with the general law relating to such securities, it is not intended that bankers or students should accept such statement of law as is contained herein as in any degree comprehensive. All bankers are wise to obtain legal advice with regard to securities they are accepting from their customers unless the security is of a simple nature and completely covered by their own printed forms, which are usually as foolproof as experience can make them. There are many pitfalls in dealing with mortgages of land, "floating charges," guarantees, chattel securities, etc., especially should the time arrive when it is necessary to realise them, and a wise banker will seek out the man of law before taking any important step. Hence this chapter is no more than a broad outline of the law and practice relating to banking securities and the granting of accommodation to customers by way of overdraft.

## (2) Elements of Safe Lending.

Of all the duties devolving upon a banker those associated with the safe lending of the bank's money undoubtedly constitute the most important, and require the highest degree of both knowledge and intelligence. Appli-

cations for loans must be looked at from many angles. Most careful consideration must be given to—

- (a) The character, ability and financial standing of the customer.
- (b) The purpose for which the loan is required.
- (c) The prospect of repayment of the loan.
- (d) The desirability and value of the security offered.

### **(3) The Personal Factor.**

In considering these points in the above order, we think it will be accepted without question that if a banker had any doubt as to the honesty and integrity of an applicant for a loan, he would be wise to decline the proposal even if the security offered be satisfactory. The capacity to gauge character is an essential qualification of a successful bank manager, and frequently marks the difference between the able and the indifferent banker. The capacity to say "no" when necessary is also an essential qualification. A weak manager is often misled by the suave talker whose geese are all swans and whose promises are forgotten as soon as made, or is dominated by the browbeating type whose threats to change his banker if he is not given what he wants frequently force an unwilling consent to an advance which later proves far from satisfactory. Again, a manager's desire for personal popularity in a small community, and sometimes in a large one, results in a hesitancy to say "no," when a firm refusal is called for. Truly "character" in both customer and bank manager is an important element in the safe lending of the bank's money!

Side by side with character must be considered the ability of the borrower, in the particular walk in life which he has chosen. A "muddler" in any walk of life is always a troublesome customer to deal with, and more money is lost by the customer's lack of ability than by his lack of honesty. Too many men by force of circumstances, or by choice, carry on callings or fill positions for which they are not fitted. There are many farmers whose failure to make their

farms pay is not due to the weather, the soil, market prices, bad luck or to the hard-heartedness of their bankers. There are probably more incompetent men in farming occupations than is to be found proportionately in any other occupation, and a wise banker endeavours to sort them out when the question of a loan is under consideration.

Tradesmen, too, especially small retailers, include many men of poor capacity, and a banker must exercise discrimination in granting credit to traders, and should, to this end, cultivate skill in judging their business capacity.

The professions also contain many men who, while possibly reasonably able in their professional work, are first-class muddlers so far as their finance is concerned. These customers are amongst the special trials of a bank manager's existence.

It is, however, our opinion that the commercial morality of all classes in New Zealand is of a very high standard. There may be muddlers and incompetents in fairly large quantities, but to meet the definitely unreliable and unscrupulous type of business man is an unusual experience, though he is not entirely unknown to banking circles.

The banker must next consider the question of the financial standing of the applicant for a loan from his bank. It is usual to request the customer to furnish a statement of his assets and liabilities, so that the banker may judge of the safety of the loan and estimate his customer's financial ability to repay it. Even if security is to be given, few bankers would in the first instance deliberately make a loan knowing that it was inevitable, or at least more than probable, that it would eventually be necessary to realise the bank's security in order to obtain repayment. Security is only emergency cover, the real source from which repayment is expected being the successful outcome of the customer's venture—his ability to repay from surplus profits. Hence the need to know his financial strength and to what extent he is to lean on his banker for assistance. Few business or farming ventures can hope for success if they need

to lean on borrowed money much beyond 50% of the capital outlay. The seas of commercial enterprise are strewn with the wrecks of ventures launched on credit—especially credit which is repayable on demand.

#### **(4) The Purpose of the Loan.**

Having now fully considered the character, ability and financial standing of the proposed borrower, the banker must give some consideration to the purpose for which the loan is required. It is not, generally speaking, the banker's business to question what his customer spends his money on, but when that money is being lent on overdraft by the banker, the latter undoubtedly is definitely interested in the use to which it is being put. There have been times when restrictions have had to be placed by bankers on loans for such purposes as the purchase of additional farm lands by farmers, or on the building of houses or business premises, or to repay existing mortgages, or for purely investment purposes. When bankers' funds are ample, probably safety rather than purpose is a deciding factor, but when, as has frequently been the case, bankers' available loanable funds require careful distribution, those purposes which, after giving due consideration to the matter of safety, will most assist towards improved conditions in the country receive more sympathetic consideration. We are fully aware that the banker's point of view and the borrower's ideas are not always identical on the question as to what is best for the community, but the banker is in the better position to judge. It goes without saying that bankers do not encourage borrowing for speculative purposes, though given good security they may find the money to test out a legitimate venture of which the outcome is doubtful, but which if successful may be a valuable addition to the business enterprises of the community. But it is not sound banking policy to lock up funds in purely mortgage business, where the prospect of repayment is remote except from sale of the property mortgaged. It must always be kept in mind

both by the banker and the borrower that bank loans are repayable on demand and that the demand if made must be met with reasonable promptitude. We are afraid that in this year of grace, 1935, this latter ideal would not bear the test of practical operation, many loans, especially to the farming community, being very far from "repayable on demand." It is obviously a dangerous banking policy which locks up huge sums in loans of a nature most difficult to call in, whilst the deposits in the banks which have provided the funds so lent are repayable either on demand or on terms not exceeding two years. Our opinion is that this is a distinct weakness in the banking system of Australia and New Zealand—the risks entailed in short-term borrowing and long-term lending. It is not unknown in England, for Sir Arthur Salter, K.C.B., in his recently published and most able book, "Recovery" (London, 1932, page 87), states:—

"Long-term capital is therefore necessary (for new industrial enterprises). Capital of this kind cannot be supplied by the deposit banks without danger; for their primary duty is to see that they are always able to repay their depositors on demand, and they must therefore keep their resources liquid. In practice banks have drifted into what has become long-term lending, but for the most part involuntarily. It is a dangerous function for them to discharge."

Having dealt briefly with (a), (b) and (c) (*supra*), we must deal now at some length with (d), namely the desirability and value of the security offered by the customer as cover for the loan applied for, and under this head we propose to deal with securities in the order of their desirability, and also to touch on the various points of both strength and weakness in connection with each class of security.

#### **(5) Fixed Deposits as Security.**

Whilst a bank is under no obligation to lend against amounts placed with it on fixed deposit for a term, it



seldom refuses to do so, and of course, as far as security is concerned there could be none better. Occasionally a request is made to lend against the Fixed Deposit Receipt of another bank. Needless to say such security is gilt-edged. The rate of interest charged in each case is usually below the current overdraft rate.

**(6) New Zealand Government Debentures and Inscribed Stock;  
Local Body Debentures.**

New Zealand Government and local body issues have long been considered the most gilt-edged security for accommodation required from a banker and advances up to 80% or 90% have usually been obtainable, but the legislation of recent years has seriously shaken the faith of the investor in such investments and has also rendered them less attractive from a bank security point of view. A precedent has been set for revision of the debenture holder's contract during its currency, affecting both the matter of rate of interest, and the term of the loan, and this must tend to shake confidence and raise the fear that the process may not yet have stopped. Furthermore, local body debenture holders, although holding an investment ranked as a trustee security, have received a shock as a result of the disclosure of the impotence of the debenture holders in case of default by a local body, as in the case of the Thames Borough Council. It is advisable for the investor in, or lender against, local body debentures to enquire carefully into the loan indebtedness of the local body in question relatively to the valuation of the area covered by its rating powers. In the case of the Thames Borough the loans issued actually exceeded the unimproved value of the Borough and there are other local bodies in New Zealand whose indebtedness from the investor's point of view, is far in excess of a safe margin. A banker should exercise wise discrimination in accepting such debentures as security for advances to his customers.

**(7) Landed Property—Freehold and Leasehold.**

There are two systems of land title in New Zealand, the first known as the "Deeds System" or "Old Conveyancing Style" title and the latter the "Torrens" or "Land Transfer System."

*"Deeds" or "Conveyancing Act" Titles.*

Under this system the title to the land consists of the chain of deeds dealing with that piece of land commencing with the original Crown Grant down to the last Conveyance, and any break in the chain, or flaw in any Conveyance may imperil the title. It is not the registration, but the documents themselves which confer title, though an unregistered document may sometimes, but not necessarily, be set aside in favour of a subsequent registered document.

It is therefore necessary to carefully search the Deeds Register at the Deeds Registration Office to ascertain whether all necessary deeds are held, or accounted for, before a banker is safe in accepting as security a mortgage over land under the old Act.

*Land Transfer System.*

Under this system the title to land is evidenced by the Certificate of Title issued by the District Land Registrar, and on this certificate is recorded all dealings with the land. It must be noted that unlike the previous "Deeds" title, it is the registration of the instrument which confers the title to the land. A transfer of the land is effected by means of a "Memorandum of Transfer" from the existing registered proprietor to the transferee, but the latter does not acquire title until this document, together with the Certificate of Title, is lodged for registration with the Land Transfer Office, which later delivers to the purchaser the Certificate of Title with a "memorial" noted thereon that the land has been duly transferred to the name of the purchaser. This title cannot be upset as it is guaranteed by the State.

In 1924, the Legislature passed an Act intituled "The Land Transfer (Compulsory Registration of Titles) Act,

1924," which provided that all land in New Zealand must be brought under the Land Transfer System within a period of five years from 1925, or as soon as possible thereafter. The process has not yet been completed, but considerable progress has been made, and shortly land titles under the old system will be a rarity.

#### **(8) Mortgages Over Land.**

A mortgage under the Land Transfer System is registered by presenting the Memorandum of Mortgage in duplicate, with the Certificate of Title at the Land Transfer Office for registration where the necessary "memorial" is duly recorded on the Certificate of Title and that document and one copy of the Memorandum of Mortgage handed to the mortgagee. Mortgages over the same land rank in priority of registration and the holder of a second mortgage must apply to the first mortgagee to "produce" the Certificate of Title at the Land Transfer Office to enable his mortgage to be registered, but the first mortgagee is entitled to have the title deed subsequently returned to him. The registration of a mortgage under the Land Transfer Act does not convey any legal estate in the land, but operates only as a charge on the land with a power of sale. Under the "Deeds" system a first mortgage does operate as a conveyance of the legal estate to the mortgagee, subject, however, to the right of the mortgagor to have the property re-conveyed to him upon payment of the amount due under the mortgage. Hence arises the term "equity of redemption" or the right to redeem, and so we speak of the mortgagor's equity, meaning his interest in the property remaining after the amount of the mortgage, or mortgages, has been deducted. This term is now used generally as regards land mortgaged under either system.

It is as well that bankers should know that under the "Property Law Act, 1908"—"No land shall be charged or affected by way of equitable mortgage or otherwise by reason *only* of any deposit of title deeds relating thereto,

whether or not such deposit is accompanied by a written memorandum of the intent with which the same had been made." If the letter depositing the deeds as security also contains an agreement to execute a mortgage when called upon, such agreement would constitute a valid equitable mortgage, but a letter merely depositing the deeds as security would not do so.

#### **(9) Discharge of Mortgages.**

Upon payment of all moneys due under a mortgage, the mortgagee under the Deeds System must re-convey the property to the mortgagor. Under the Land Transfer System he executes a discharge of the mortgage. In both cases the document is registered at the Registration Office. In the case of a "Deeds" mortgage the re-conveyance or release, which is usually written on the mortgage itself, is afterwards returned to the owner and forms one of the connecting deeds constituting his title, but in the case of the Land Transfer Mortgage, the discharge which is also written on the mortgage is retained with the mortgage and the title only returned to the owner with a "memorial" thereon to the effect that the mortgage has been discharged.

#### **(10) Second Mortgages.**

Whilst bankers do not, as a rule, care for second mortgages as security for advances, it is by no means unusual to accept them, possibly to strengthen securities already taken, or because an advance previously sound has become less so and the customer has nothing but "equities" to offer. In many cases where the first charge is a light one compared with the value of the property, a second mortgage may be considered good security.

There are two points connected with second mortgages to which bankers must be alive. Where they accept as security a second mortgage over a property they must notify the first mortgagee of the fact, to protect themselves in the event of the first mortgagee making "further advances"

under his mortgage, because such advances would take priority over the second mortgage, if such notice were not given. The second point to be carefully noted is that should a banker who holds a first mortgage receive notice that his customer has given a second mortgage over the same property he must break the account, that is he must charge no further cheques to that account—as the “rule in Clayton’s Case,” i.e., that future lodgments to the account must be regarded as received in reduction of principal owing, would apply to all future transactions. The usual practice is to open a fresh account to be conducted on a credit basis for further transactions.

#### **(11) Foreclosure and the Rights of the Mortgagee.**

Under English law a mortgagor who has been ordered by the Court to repay his mortgage by a fixed date and who fails to do so thereby puts an end to his equity of redemption—the mortgagor is “foreclosed” from his equity and the mortgagee becomes the absolute owner of the property.

In New Zealand there is no similar law of foreclosure. The rights of the mortgagee under New Zealand law are:—

- (1) To sue the mortgagor on the personal covenant contained in the mortgage to repay the principal and interest.
- (2) To enter and take possession of the land when any default has been made, so as to receive all profits and returns. He must account strictly for same and is accountable for the care of the property.
- (3) To sell through the Registrar of the Supreme Court to himself or to a third party, but the sale must be by public auction.

The above are the main rights, though there are others, such as certain rights to distrain on the goods or chattels of the occupier or tenant up to the amount of rent due, and the right to obtain possession against a tenant in certain cases, but the main remedies of the mortgagee are those of entering

into possession and selling through the Registrar. The purchaser in such a case gets a good title free from the mortgage and all subsequent mortgages. If the property realises more than the amount of the mortgage and expenses of sale, then subsequent mortgagees come next in order of priority, and finally any remaining surplus goes to the mortgagor.

Default in carrying out any covenant in the mortgage is, as a general rule, a good ground for the mortgagee to take the above steps.

#### **(12) Transfer of Mortgage—Sub-Mortgage.**

A registered mortgage under the Land Transfer Act can be transferred by a Memorandum of Transfer and the transferee becomes entitled to the mortgage debt and all rights under the mortgage, but he should immediately give notice of the transfer to the mortgagor, who otherwise is entitled to pay interest and principal to the original mortgagee. The transferee should also satisfy himself as to the amount actually owing under the mortgage at the date the transfer is made.

A mortgagee may sub-mortgage his mortgage—that is, give a mortgage over his mortgage. In this case also the sub-mortgagee should, in order to protect his interests, give notice of his sub-mortgage to the original mortgagor, but as sub-mortgages present difficulties in case of default by the original mortgagor, the better form of security is a transfer of the mortgage accompanied by a Deed of Covenant defining the terms of the agreement between the parties.

#### **(13) Interest.**

It is usually provided in mortgages that interest is payable at say 7% with a proviso that if interest is paid promptly the mortgagee will accept a lower rate, say 5%. A provision, however, that interest be at 5%, but that 7% will be charged if it is not paid promptly would not as a rule be enforced by the Courts, as this would be in the

nature of a penalty, and the Courts are not favourably disposed to enforcing such penalties. A point that bankers should note is that, unless there is an express agreement to the contrary, simple interest only can be charged, and though a banker, so long as the relation of banker and customer exists, can, in the case of mortgagors, apparently (see page 186) charge compound interest with half-yearly rests on the customer's general balance of current account, he cannot do so where there is a fixed mortgage account for a fixed sum and for a fixed period.

#### **(14) Rates.**

These are a first charge against the land if unpaid, and a first mortgagee may have to pay them to prevent their ranking as a charge prior to his mortgage, and if required to pay, may be sued for them. He may recover them from the mortgagor, or include them with his mortgage as a charge against the land with interest payable at the mortgage rate. Also the non-payment of rates is usually a "default" in the mortgage contract, giving the mortgagee other remedies.

The cost of destroying rabbits, under the Rabbit Nuisance Act, may also be recovered from the first mortgagee; and the same remarks apply.

#### **(15) Workers' Compensation Claims.**

An important point which property owners used to have to consider was the liability arising out of accident to workers employed in or about a building, constituting a charge against the employer's interest in that building. This charge took priority over all existing charges, and until recently mortgages usually contained a clause under which the mortgagor covenanted to insure against his liability under the Workers' Compensation Act.

However, under the "Mortgagees' Indemnity (Workers' Charges) Act of 1927" it is not now necessary to insure against this liability. It is therein provided that all

mortgages shall be charged with an extra stamp duty of 1/- and the total amount so collected shall be paid into a special fund, and in any case where a mortgagee suffers loss by enforcement of a compensation charge under the Workers' Compensation Acts he may claim against this special fund for the amount.

### **(16) Valuation of Freehold and Leasehold Property.**

An exceedingly important feature in dealing with mortgages over land, and improvements thereon, is the question of value, and never more so than at the present time (1935), when values have fallen lower than they have been for many years.

Whilst a banker usually relies on a competent valuer, he should also have some knowledge of the basis on which values are based. There is no general rule in arriving at land values. We know that farm values are often accepted on the basis of so much per sheep or per cow carrying capacity, but this by itself is a dangerous basis to work on. A farm of 100 acres carrying 50 cows which are producing an average approaching 300 lbs. of butter-fat per annum, is a better proposition as a rule than a 300-acre property carrying 75 cows producing an average of 200 lbs. each. Similarly a sheep property of under 1,000 acres carrying 2,000 sheep, mostly ewes, where the lambs can be fattened off their mothers, is a sounder proposition than a 3,000-acre property carrying about 3,000 dry sheep. Again road access to dairy factory, and the question of manure required in the case of dairy land, and the various questions of access to rail, sales yards and freezing works, and whether it is easy country to muster, death rate in high country, and climate, are, in sheep country, some of the many questions affecting land values apart from mere carrying capacity. It is advisable also to know something of the net returns from a property over a period of years under capable management before a reliable estimate of value can be made.



Where the property is a Crown leasehold, as is the case with a fair proportion of the farm land in New Zealand, the basis on which the goodwill of the lease is arrived at varies materially. In the case of the Lease in Perpetuity—999 years—the matter is simple, in that the value would be the freehold value, less the rental capitalized on say a 5% basis. The difficulty arises in the case of the 21-year and 33-year renewable leases and the 66-year leases, where the question of compensation for improvements is involved. Even the question of what are “improvements” is one which is a perennial source of argument; and where the renewable lease has only a part of the period to run and there can be only an estimate as to what the new rental may be, the valuation of goodwill requires very careful consideration. It is not safe to accept Land Tax Valuations for freehold or leasehold, though these may be some guide. At the present time these valuations are mostly in excess of realisable values, both in town and country.

In valuing town land, both business premises and residential properties, fair rental value is a good basis on which to arrive at a valuation, but questions of whether the locality or town in which the property is situated is progressing or going back, the material of which the buildings are constructed, the insurable value, the use to which the building is or can be put, are some of the points to be considered. Many of the smaller towns of New Zealand are going back owing to their proximity to larger centres and the advent of the motor car, and it is only a matter of time when a number of them will resemble deserted villages. Town properties in such areas are poor security. At present in the cities many business premises are unlet, or only partially occupied, and actual rentals give a poor return on the cost of land and buildings, and valuations must be written down accordingly.

One of the problems of the moment is whether it is reasonable to accept present depressed values as permanent and so advisable to write down recorded values and make pro-

vision for corresponding losses. Whilst it is probable that within a year or two there may be some recovery of values, it is likely that we shall not see in this generation the values of world commodities, and therefore land values, approach the figures of post-war years. Hence it is advisable for all concerned in lending money to write the security value for their loans down to present-day realisable value and to face the losses such adjustment may entail.

**(17) Credit Balances as "Set-off."**

It is not unusual for a customer's account to be in credit at times, though he has arranged for an overdraft limit and mortgaged his property (or given other security) for the accommodation. It is needless to say that the coming into credit of the account does not affect or release the mortgagor's security.

It is, however, a common arrangement for a customer to have two or more accounts, any of which may be in credit, whilst one or more may be overdrawn. It is usual in such cases to allow the credit balances as "set-off" against the debit balances for interest purposes, and to take a letter from the customer authorising the bank to make a transfer from one account to another at any time the bank may desire to do so. Of course the credit balance in such cases must be the customer's own funds and not in any way of the nature of trust funds.

**(18) Mortgages Given by Limited Companies.—Debentures Constituting a "Floating Charge" Given by Limited Companies.**

A Trading Company has an implied power to borrow money for the purpose of trading, and to charge its property, but a banker should examine the Memorandum and Articles of Association of the Company to ascertain whether there are any restrictions on such borrowing. A Company's power to borrow against its uncalled capital should apparently be authorised by its Memorandum of Association. If the term used is merely "the Company's property," uncalled

capital would not be included, but the term "assets" would probably include uncalled capital.

A common form of security given by a Company to its bankers for overdraft accommodation is a "floating charge" evidenced by debentures. These debentures usually create a charge over the whole undertaking, including the uncalled capital. The Company which has given such a charge has full power to deal with its assets in the ordinary way of business, until as a result of the Company's default the debenture-holder steps in to enforce his security, when the floating charge immediately becomes a fixed charge for the amount then owing up to the full amount of the debentures. It is usual and advisable, unless the debentures expressly exclude land from their charge, to take as well a specific mortgage over the landed property of the Company, otherwise a specific mortgage over the land given by the Company to a third person would take priority over the debenture charge, providing the mortgagee had no knowledge of such charge.

Debentures given to the bank as a "floating charge" usually give a specific power to appoint a Receiver without applying to the Court should circumstances arise rendering such a course necessary. A Receiver in these circumstances is the agent of the bank which is liable on his contracts, but to obviate this it is usual to insert a clause in the debenture that the Receiver is to be the agent of the Company. A Receiver appointed by the Court is personally liable in respect of his contracts, though indemnified out of the assets of the Company.

The usual circumstances which would make his remedies available to the holder of a floating charge are—

1. Failure to pay principal and interest.
2. Order of the Court winding-up the Company.
3. If the Company passes a resolution to wind-up.
4. On the Company ceasing to be a going concern and stopping business.

5. On the Company parting with substantial assets otherwise than in the ordinary course of its business.

**(19) Mortgages by Trustees and Executors.**

It is necessary for a banker to see that a trustee or an executor has specific power to borrow under the instrument which constitutes his trust, though the latter may borrow to pay death duties and for the purpose of paying testator's debts without such specific authority, and he may mortgage the testator's real estate for such purposes. In all dealings with trustees and executors it is incumbent on the banker to satisfy himself as to the authority of such customers to make such dealings.

**(20) "Mortgagors and Tenants Relief Act, 1933."**

Under this Act, which is a consolidation of the "Mortgagors Relief Act, 1931," and its amending Acts, considerable restrictions are placed upon the exercise by mortgagees of their remedies under their mortgages in case of default by the mortgagor. These restrictions originally applied to all mortgages executed before 17th April, 1931, but the above Act includes all mortgages operative but not executed prior to 17th April, 1931, all mortgages which came under the 1931 Act but which have been varied by the parties, and all mortgages which are in replacement of mortgages which originally came under the 1931 Act.

The Act provides that before a mortgagee can exercise his powers he must give the mortgagor written notice of his intention, a month's notice in the case of land mortgages, and seven days' notice with regard to chattel securities. The mortgagor may then apply to the Court for relief. The Court may refer the application to a Mortgage Adjustment Commission set up by the Act, and this Commission after hearing evidence may make a recommendation to the Court. The Court may—

- (a) Order the mortgagee to postpone taking any action for any period up to two years.

- (b) Postpone due date of mortgage for two years.
- (c) Reduce rate of interest for two years.
- (d) Remit arrears of interest.
- (e) Postpone rights of mortgagee generally.

With regard to Stock Mortgages, the Court may make an order as to the application of the income derived from stock.

A mortgagor can apply for relief without having received any notice from the mortgagee, and may also make application from time to time for further relief.

The Act continues in operation until December, 1935, after which date applications cannot be heard.

The Act in addition to applying to the mortgagor, also applies to the guarantor of a mortgage.

#### **(21) Instruments by Way of Security Over Chattels.**

These instruments are subject to the provisions of the Chattels Transfer Act, 1924. The most important provisions of this Act relate to the registration of the instruments, which must be effected within twenty-one days of execution thereof. Registration is effected by depositing a copy of the instrument duly verified by affidavit at the Supreme Court Office in the Provincial District in which the chattels are situated. Where the grantor is a limited liability company the registration is effected at the office of the Registrar of Companies.

The Register is open to inspection, and registration is deemed to be notice to everyone of the existence of the charge.

Failing to register renders the instrument fraudulent and void against the Official Assignee in Bankruptcy, an assignee or trustee for the benefit of creditors, and the sheriff or other person seizing chattels comprised in such instrument, but otherwise the instrument is a contract enforceable by the grantee. It would not be valid against any *bona fide* purchaser or subsequent registered mortgagee of the goods comprised in the instrument. Instruments must be re-registered every five years.

The Chattels Transfer Act requires careful study by bankers, as although chattel securities are not specially popular with bankers, it is not unusual to take them, particularly over the live stock of a farmer whose property is also under mortgage to the bank. Indeed, during the last few years many bankers have had cause to regret that in connection with their loans to farmers their security over the land was not accompanied by a chattel security over the stock, for in many cases farmers have had to seek accommodation from stock firms for the purchase of their stock and have given these firms a stock mortgage. To-day these firms under their stock mortgage control the returns from the wool, surplus stock and dairy produce of the farmer, and in their natural desire to protect their own interests first, the interest payable under the banker's mortgage, and even rates and land tax are left unpaid. As the rates and taxes are a charge against the land and take priority to existing mortgages, the banker's position in such circumstances is a very unsatisfactory one.

Apart from live stock, a banker sometimes takes security over the next ensuing wool clip, and over growing crops and possibly over farm implements. It is not possible within the scope of this chapter to traverse the many ramifications of the Chattels Transfer Act. Each bank has its own forms of instrument which are as legally water-tight as possible, but in spite of this there are too many loopholes in stock mortgages for them to be very satisfactory banking security. A banker of the old school objected to taking a stock mortgage on the ground that "you could not keep the stock in the bank strong-room," but such prejudices must give way to present-day conditions, and we think that in the light of recent experiences, stock mortgages are likely to be more acceptable to bankers than hitherto, certainly in those cases where the bank already holds a mortgage over the farm.

There are severe penalties up to two years' imprisonment and £100 fine awaiting the grantor of an instrument who

disposes of chattels covered by the instrument of security without the prior consent of the grantee.

**(22) Mortgages and Liens over Shares in Limited Companies.**

Amongst the securities readily accepted by bankers to cover overdraft accommodation are shares in sound Companies, especially those of Companies and of other banks which are daily quoted on the New Zealand Stock Exchange, and so have a readily ascertainable market price. The form of security usually taken is a lien or mortgage containing power of sale and constituting the Bank or its manager as attorney for the mortgagor for the purpose of effecting a transfer to a purchaser in event of sale being necessary.

A point that bankers must be alive to is a common clause in the Articles of a Company giving the Company a paramount claim on the shares of any shareholder who may become indebted to the Company. This paramount claim will have priority over the bank's claim only if the shareholder's indebtedness to the Company arose before, and not after the Company received notice of the bank's lien. Hence it is usual for the bank to give the Company notice of its lien as soon as it is has been executed.

Shares in small private Companies are not satisfactory security as, although they may be good value on the basis of the balance-sheet figures, they are not readily realisable. There are also frequently various restrictions on the transfers of such shares which lessen or even preclude realisation altogether, such as a clause under which the directors may refuse to register a transfer without giving any reason therefor.

**(23) Life Policies as Securities.**

Security over Life Policies is usually effected by a complete assignment of the Policy, signed by assignor and assignee and endorsed on the Policy. Such assignment is then registered with the Life Insurance Company.

Sometimes the security over a Policy is effected by a mortgage and a statutory form of mortgage is provided

under the Life Insurance Act. This form of security is more usually taken by a bank in the case of Policies in English Companies which have no office in New Zealand.

A banker will usually lend well up to the surrender value of a Life Policy to a customer of any standing, though he usually bears in mind that should a customer's position be weak, there is a possibility of his being unable to keep up the payment of his premiums, and the effect will be to reduce the surrender value of the policy. Hence it is wise in such cases to confine any loan to an amount leaving a margin of at least a year's premium between the amount of the loan and the amount of the surrender value. No policy becomes void by non-payment of premiums so long as premiums in arrear, plus interest thereon, do not exceed the surrender value.

Policies up to £2,000, plus accrued profits, are specially protected against—

- (1) The Official Assignee in Bankruptcy.
- (2) Any process of Court.
- (3) A general assignment of property.
- (4) Debts under an intestacy.
- (5) A testator's debts or legacies, unless the testator so directs.

If, however, a Life Policy has been assigned or mortgaged to secure a debt it is not protected so far as the amount of that debt is concerned.

#### **(24) Guarantees.**

In a contract of guarantee there must be three parties—the person primarily liable, the person to whom he is liable, and the guarantor whose liability arises only on default by the person primarily liable.

Guarantees must be in writing to comply with the Statute of Frauds, otherwise they are not enforceable by action, though not necessarily void.

There must be consideration for a guarantee, and bankers should note that the mere existence of a debt is not sufficient



consideration to support a guarantee about to be taken. Hence it is usual in such cases to accept as consideration the "forbearance to sue" and guarantees to bankers are usually worded somewhat as follows:—

"In consideration of your accepting and acting on this guarantee and of all advances or advance made either at the time of receiving this guarantee or at any time afterwards to A.B. of Wellington, grocer, and in consideration of your forbearing for one day to press for payment of past advances, etc., etc."

Guarantees to bankers are usually continuing guarantees, and not discharged by death, and are payable "on demand." A guarantee given on account of a partnership would be revoked as to any future transactions by any change in the constitution of the firm. Under a joint and several guarantee any guarantor has a right of contribution from all his co-guarantors for any amount paid beyond his share, and guarantors generally may, after having paid the principal's debt, demand the assignment to them of all securities held by the bank and to stand in place of the bank, and may use all the remedies of the bank in relation thereto. This applies even though they were unaware of such securities being held by the bank in support of the guarantee. The banker must not, during the currency of a guarantee, surrender any such supporting security without the consent of the guarantor; if he does so the guarantor would thereby be *pro tanto* discharged.

A guarantee (unless made by deed) is a simple contract and the Statute of Limitations bars the right to bring an action after six years, but as the liability of the guarantor arises only after a demand has been made on the principal debtor and is not complied with, the Statute begins to run only from the date that demand is made on the guarantor.

**(25) Bankers' General Lien over Shares, Debentures, Fire Policies, Bills for Collection, etc.**

A banker has a general lien on securities and documents lodged with him as a banker by a customer, but this will not

apply to documents lodged purely for safe custody. The lien would cover documents lodged by a customer for some ordinary banking purpose other than safe custody unless the circumstances are inconsistent with such interpretation. Usually negotiable documents or documents for collection, debentures on which the bank collects the interest, policies of insurance on which the bank pays the premium, etc., come under a banker's general lien.

However, it is not usual for a banker to depend on this general lien. Most banks have their own special forms of lien, previously referred to, which they take over Share Certificates, Debentures, Fire Insurance Policies, etc., and also a Banker's General Lien form if they wish to cover such documents as bills lodged for collection, etc.

#### **(26) Warehouse-keepers' Certificates—Store Warrants.**

Whilst bankers do not favour advances against Store Warrants for goods or chattels, it is customary to make such advances to a considerable extent, more particularly against New Zealand produce awaiting shipment. Letters of Credit established in London, or foreign countries, authorising the banks to negotiate the documentary drafts of buyers of wool, frozen meat and dairy produce where shipment has actually been made, also authorise the banks to make advances against such produce pending shipment. This clause in the Letter of Credit is known as the "Red Letter Clause" as it is usually printed in red. The object of the clause is to enable buyers to pay for their purchases within the customary time after the sale contract has been made. Frequently, owing to shipping not being available and bills of lading therefor not being obtainable to support a draft on their principals, in terms of the Letter of Credit, buyers cannot negotiate their drafts and obtain funds soon enough to fulfil their sale contract; hence the need of temporary advances under the "Red Letter" clause. Usually the clause stipulates that the bank must hold Store Warrants covering goods to the value of the advance which is to be cleared as

relative shipment is made. These warrants are given by the Freezing Company, Dairy Company, Stock and Station Agent or Harbour Authorities in whose custody the goods are held on behalf of the buyer, and it behoves the banker to see that his Store Warrants are in order and sufficient cover for his advances. It is a matter which requires careful watching. Warrants must be surrendered or endorsed as goods move out and fresh warrants given for goods coming into store. It is our experience that a certain amount of laxity exists, both on the part of banks and warehouse-keepers in carrying out their duties in this connection. A fire in a large produce store will soon bring home to those responsible the necessity for punctilious care in the handling of Store Warrants, and making advances against them.

**(27) Bills of Lading—Letters of Hypothecation.**

Where the banker purchases his customer's documentary drafts on London or elsewhere (not under Letter of Credit from London) against produce shipments, it is usual for the customer to give the bank a letter of hypothecation, generally one to cover the season's shipments; sometimes one to cover all future shipments made by the customer. Against these documents the bank negotiates the customer's drafts. The letter of hypothecation not only gives the bank complete security over the goods shipped, but contains authority for the banker to deal with the goods if, for instance, the draft is not met at the other end, and to act generally as agent for the shipper. The shipper also undertakes to make good any loss and expenses involved in realising the goods. It is necessary that the bank should be in a position to deal promptly with the produce, perishable goods particularly, in the event of any failure on the part of the consignee, and the letter of hypothecation is his authority to do so.

**(28) Local Bodies and their Borrowing Powers.**

The borrowing powers of local bodies in New Zealand by way of overdraft from their bankers is chiefly covered by the "Local Bodies Finance Act, 1921."

Under this Act a local body may borrow in anticipation of its revenue from its bankers on overdraft (or from any person or persons) to a maximum amount not exceeding three-fourths of the revenue receivable for the preceding year, and must not owe at the end of any year on its General Account any sum greater than such part of the revenue of the year then ended as remains outstanding and unpaid.

It is necessary to note that the banker may lend up to three-fourths, not of the revenue actually received during the previous year, but of that which the local body should have received if all rates, &c., levied for the year had been duly collected. Further the amount still owing on overdraft at the end of the year shall not exceed the amount of revenue outstanding pertaining to such year. Revenue still in arrears and outstanding for previous years cannot be taken into consideration.

If a banker allows a local body to overdraw in excess of three-fourths of its revenue, as above laid down, any sum so advanced is not recoverable from the local body, but the banker is not liable in any manner if the local body fails to have its overdraft within the amount of its outstanding revenue at the end of the year. The members of the local body incur the risk of a penalty up to £100 each for any borrowing in breach of these provisions.

In the case of a new local body, it may borrow from its bankers during the first year of its existence such amount as the Minister of Internal Affairs may approve of.

There are also special provisions for borrowing from bankers under the "Finance Act (No. 2), 1927," under which a Borough Council may borrow money in connection with any trading undertaking, subject to approval of the Local Bodies Loans Board. A Tramway Board or a Board constituted by special Act for supplying gas lighting facilities has similar powers.

Further borrowing powers are given to local bodies in case of emergency such as flood, earthquake, fire or other

cause whereby expenditure beyond that estimated for the year becomes necessary. Such amount may be borrowed on overdraft from a banker with the consent of the Minister of Internal Affairs.

An important clause in the "Local Bodies Loans Act, 1926," gives local bodies power pending the raising of any special loan, to borrow from their bankers (or other persons) any amount not exceeding the amount of the loan by the hypothecation or mortgage of any new debentures authorised to be issued. The moneys so borrowed are a first charge upon the loan when raised. The local body may hypothecate a larger amount of debentures than the amount so borrowed.

In recent years when, owing to restrictions placed upon the rate of interest at which a local body may borrow, and the consequent difficulty some local bodies have found in raising a loan to pay off a maturing loan, it has been found necessary under this clause to borrow from bankers enough, after utilising sinking funds accumulated, to repay the maturing loan. This enables the local body to await a favourable opportunity for making a public issue and so clear this special overdraft. The effect, however, of the legislation of 1933 on future local body issues remains to be seen. It is doubtful if they will again for some time occupy the favoured place they have hitherto held in the estimation of investors. They can be too easily "tinkered" with by legislation, and investors can no longer feel that their contract with a local body is inviolate. Hence, in view of the possible difficulty of later finding a market except at a heavy discount, local body loan issues are no longer very attractive to a banker as security for a loan to that local body.

The position of a banker in the event of a local body being unable to repay its overdraft on its general account due, say, to its inability to collect its rates is not a very satisfactory one. The overdraft is granted in anticipation of revenue to be received, but it is doubtful whether the Court has power to appoint a receiver to collect such

revenue and recoup the bank. The local body's debenture-holders can on default in payment of their interest apply to have a receiver appointed to collect such interest, but the only remedy a banker appears to have is a right of action and the further right to enforce his judgment against such assets as the local body may possess, not including the public utilities, in which most of the local body's loan moneys have been expended. It is therefore desirable that bankers, as a condition of future lending to local bodies, should seek to strengthen their security position.

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## CHAPTER VIII.

## HOW TO READ A CUSTOMER'S BALANCE SHEET.

Among the many qualifications required of a successful banker is that of being able intelligently to read and dissect the balance sheets and statements of position of his customers, especially those of private traders or trading companies. It is essential that he should know the financial position of those of his customers to whom he is lending the bank's money, and equally essential that he should know where to look for possible weaknesses in the balance sheets and statements submitted to him. We propose therefore to refer briefly to the usual items to be found in such statements and to touch on the points in each to which it is advisable to give special consideration before arriving at a conclusion as to the customer's real position. We shall refer to assets first.

**(a) Assets.****(1) Cash in Hand or in Bank.**

This item is not usually conspicuous in the balance sheet of a trader who wants to borrow money. When it does appear it requires no comment.

**(2) Stock-in-Trade.**

It is desirable to ascertain on what basis the stock valuations have been made, whether values have been well written down, and whether and to what extent the stock includes slow selling and "dead" stock. The stock of a trader dealing in lines which have a "fashion" value, or in luxury goods only, or any class of goods which are liable to get out of date owing to improved models coming on the market, cannot be considered as satisfactory a stock-in-trade as goods representing the necessities of life for which there

is a definite and constant demand. The banker should endeavour to ascertain how many times the stock is turned over in a year, and also the insurance cover held. He should also note, by a comparison with former balance sheets, if stock shows a tendency to increase without a corresponding expansion in turnover and business generally. Some traders are inclined to overstock, and surplus stock lying on shelves is an idle and depreciating form of capital.

### **(3) Book Debts and Bills Receivable.**

It is frequently found when a trader comes to grief financially that a prime cause of his trouble is the amount of credit he has allowed to his customers: his capital has been locked up in book debts. He probably borrows from his bankers to buy goods, and pays interest on the overdraft, and then lends the money to his customer in the form of goods, and is unable to charge interest thereon! It is the custom in New Zealand to give credit very freely to finance customers, and on the slenderest knowledge of the position of the person to whom credit is granted. Wholesalers allow credit to retailers to an astonishing extent, and retailers give similar credit to the purchasing public. Hence a banker must give close attention to book debts and bills receivable and call for a detailed list of them, if he considers it desirable or necessary. Generally speaking it will be found that book debts which aggregate in amount more than two months' turnover usually include a proportion of "sticky" accounts, and if the total considerably exceeds that amount, the trader is giving undue financial assistance to his customers, and is probably heading for trouble. If the trader's indebtedness to the bank warrants such enquiry, a request for an analysis of the list of the book debts showing the length of time each has been owing will often be illuminating to the banker.

### **(4) Investments.**

It is as well to have some knowledge of the individual items included under this head. They may consist of gilt-



edged stocks, mortgages or shares, but also possibly unrealisable shares of little value, or even second mortgages, which are still shown in the books at original cost. Many cases have been found of traders, farmers and professional men showing in their statements at cost, investments in concerns which will probably never give them any return, either in the form of dividend or capital. These people delude themselves with the belief that these are assets of value with which they may bolster up their figures and so impress their bankers. It is always important to know whether the shares and debentures were acquired on their merits as sound investments, or taken up to secure some hoped for collateral trade advantage. In the case of shares not fully paid up, the liability for uncalled capital should not be overlooked. Some such shares represent a liability and not an asset.

The items, cash, stock-in-trade, book debts, bills receivable and investments, constitute what are usually considered the "liquid" assets of a trading concern, in that they have a more or less readily realisable value, and the "liquidity" of a concern's assets is a material feature when considering its financial position and resources.

#### **(5) Property, Premises, etc.**

Property values are at all times difficult to estimate. The item "land and buildings" in a balance sheet requires most careful consideration. It is a very common thing to find these assets shown at figures above realisable values, possibly because a definite fall in property values has taken place generally but has not been sufficiently taken into account, or because depreciation in the buildings has not been dealt with on sound lines, or possibly because the particular locality has gone back in value, or for some other reason. The question of property values is more fully dealt with in the chapter dealing with securities for overdrafts. Leasehold properties require special consideration, as it is of paramount importance that the cost of any leasehold interest in land should be written off during the life of the

lease. With regard to buildings, whilst the amount of insurance-cover held is some guide, experience shows that in times of depression insurance-cover is often on too high a basis. Nor do we think that land tax and rating values can be accepted without question.

The banker must apply his own knowledge and judgment in estimating the soundness or otherwise of the value set upon this asset.

#### **(6) Plant, Machinery and Fixtures.**

A prudent business concern writes down such items as these with a liberal hand, and the banker will be wise to do the same. The experience of bankers and others who have had to find a market for plant and machinery of a concern which has been forced into liquidation almost invariably shows that such assets are almost unrealisable, and that 10% to 20% of original cost is frequently all that can be obtained for them, unless the business can be sold as a going concern.

#### **(7) Goodwill.**

This is not an uncommon asset in a Company's balance sheet, usually indicating the price paid for the goodwill of the business when it was acquired, or the goodwill of some other business since purchased. It should never appear in a balance sheet in any other circumstances. It is always advisable for a trader to write this asset off out of profits during the three to five years following purchase of the business. Should a business go back for any reason after purchase, "goodwill" is the first item to disappear. A banker usually deducts this item from the capital of a concern when making his estimate of the tangible surplus of its assets over its liabilities, and leaves it wholly out of consideration.

#### **(8) Uncalled Capital of Limited Companies.**

In estimating the position of a limited Company with a view to granting advances to that Company, the matter of

its uncalled capital as one of its assets must be taken into consideration. In order to value this asset, information as to the number and financial position of the shareholders who may be called upon, must be furnished. If the shares are widely held, the asset is usually a fairly good one, but if there are a few shareholders only, it is possible that, owing to the weak financial position of some of them, the uncalled capital is by no means worth its face value.

#### **(9) Other Assets.**

Various other assets appear in balance sheets, such as life policies, interests under wills, live stock, in the case of farmers, furniture, motor cars, etc., but these require little comment. Interests under wills, however, seldom come up to expectations when the estate is finally distributed among the beneficiaries.

#### **Liabilities.**

#### **(10) Open Accounts and Bills Payable.**

The extent to which a trader is indebted to manufacturers and merchants is the most important item to be considered on the liabilities side of the balance sheet. The weakness or strength of his position is frequently dependent on the extent to which he may become subject to pressure from those from whom he has purchased his stocks. The relationship between the value of his stock-in-trade and the amount owing thereon should be calculated and considered. The trader is obviously in a poor position if the bulk of his stock is not paid for. In so far as the amount owing is on bills payable spread over a period, the immediate position is somewhat relieved, but nevertheless the liability is there. Such a trader exists at the mercy of his creditors and is a dangerous man to lend money to. The banker should as a rule beware of a proposal that merely invites him to substitute himself for existing creditors.

**(11) Bank Overdraft.**

The question of the wisdom or otherwise of a trader borrowing heavily by way of bank overdraft or, in other words, financing through his banker, is one which is open to considerable discussion. If a trader's overdraft shows wide fluctuations so that it is evident that the elasticity of his loan arrangements with his bankers makes that method of finance more profitable than a fixed loan would be, he has a good argument in favour of financing on overdraft. But it is questionable whether an overdraft of a more or less permanent nature with only minor fluctuations can be considered wise finance. Overdrafts are repayable on demand, and usually the rate of interest charged is higher than that which can be arranged by way of fixed mortgage outside the bank. A point to be considered is how far it is profitable to have an overdraft on one side of the balance sheet, on which interest has to be paid, represented on the other side of the balance sheet by stock and book debts, on which no interest can be collected.

Farmers in New Zealand have been granted overdraft accommodation to a very considerable extent against the security of their properties, in place of the raising of loans on fixed mortgage, and some at least of the difficulties which have arisen during the years of depression have been due to this method of finance. It has, on the one hand, encouraged farmers to borrow, and on the other hand has locked up bank funds in farm mortgages, which is not, theoretically, sound banking.

**(12) Mortgage.**

It is wiser to borrow, if possible, on fixed mortgage to at least the extent to which loan money is more or less permanently required. It is wiser still to arrange for such mortgage to be on a "table" basis, under which the principal is repaid automatically over a period of years. The rate of interest for mortgages is usually lower than bank rate, and the danger of unexpected demand for repayment is removed.

**(13) Deposits.**

No wise trading concern accepts money on deposit to utilise it in its ordinary business operations. The demand for repayment of such deposits not infrequently comes when trading conditions make it most inconvenient to repay the money. Many business concerns during the last few years have had occasion to repent the acceptance of deposits. The banker always looks askance at the item "deposits" as he knows the dangers involved therein.

**(14) Capital and Reserves.**

In analysing a balance sheet in order to arrive at the real capital of a business or of a private person, it is wise to take the "liquid assets" and place them against the "demand" liabilities and compare the relative amounts, and to follow that by adding the "fixed" assets to the "liquid" assets, and compare the total with the total liabilities. Where the liabilities exceed 50% of the assets, the balance sheet is to that extent top-heavy and the danger becomes increasingly apparent as the margin grows progressively less than 50%. This rule has exceptions, of course, but is a fairly sound basis for a banker to work on in summing up the position of his customer—whether he be a trader, a farmer, or a professional man.

**(15) General.**

There are various other points a banker should bear in mind, such as the need for adequate provision for depreciation, and the building up of replacement funds for wasting assets such as machinery, etc.; the desirability of comparing balance sheets over a period of years, including profit and loss accounts; and also that balance sheets submitted by trading companies should bear the certificate of a qualified accountant as auditor.

## CHAPTER IX.

## BANKS AND BILLS OF EXCHANGE.

**(1) The Bills of Exchange Act, 1908.**

Bills of Exchange in various forms enter largely into the daily work and transactions of the banks doing business in New Zealand. As these instruments are defined and governed by the provisions of the "Bills of Exchange Act, 1908," it behoves bankers to know well those provisions. This duty and knowledge they share with all other parties to, and dealers with, bills of exchange in their various forms: solicitors, traders, insurance, financial and shipping companies, for instance. In general terms, and with exceptions which will form the main subject-matter of this present chapter, the rights, duties and remedies of banks, as parties to, or agents for handling bills of exchange, are precisely the same as those of any other party. This point is worthy of a little attention and reiteration at this stage, for it seems to be believed by many bank officials, that bills of exchange are in some way a special adjunct of banking business, and, as such, amenable to banking customs and policies. This is not so, except where banking custom is specially invoked by the Act, as for instance in Section 74 (b) where usage of trade and of bankers is one of the tests of what is a reasonable time for presentment of a cheque after its issue. But where the Act, by its plain provisions, and the Courts by their judicial interpretations of its provisions, set out the essential features of a bill or prescribe rules for its acceptance, endorsement, presentment, or discharge, or for the calculation of its due date, the customs of bankers carry no more weight than the customs of legal practitioners or shipping companies. If two bills are drawn in precisely similar terms, except that one is made payable at the acceptor's bank, and the other is made payable at the office of his solicitor, the due date of each is to be calculated

according to the provisions of the Statute, and neither the banker nor the solicitor can invoke the usages of his calling as having any bearing on the question.

## (2) Cheques.

Part II of the "Bills of Exchange Act, 1908," however, comprising Sections 73 to 83 inclusive, have particular interest for bankers and a particular bearing on banking business and practices. These sections are grouped under the heading, "Cheques on a bank." Firstly, they define cheques; secondly, they prescribe rules for presentment of cheques for payment; thirdly, they define and state the effect of various forms of crossings, and, finally, they set out the rights and duties of collecting banks and paying banks respectively in the handling of crossed cheques.

### (a) Definition of Cheque.

The definition is supplied by Section 73, in the words: "A cheque is a bill of exchange drawn on a banker, payable on demand." This throws us back to the definition of "Bill of Exchange." A "Bill of Exchange" is defined by Section 3 of the Act. It is an instrument that bears the following characteristics:—

- (a) It must be in writing;
- (b) It must be *an order* to pay; not a mere suggestion or request, but an imperative form of words;
- (c) It must be an order to pay *a sum certain*, in money;
- (d) The order to pay must be *unconditional*;
- (e) The order must be signed by the person who gives it, and be addressed to the person who is ordered to pay;
- (f) The order to pay may order payment (1) on demand, or (2) at a fixed future time, or (3) at a future determinable time;
- (g) It must order the payment to be (1) to bearer, or (2) to a specified person, or (3) to the order of a specified person.

An instrument that does not comply with these conditions, or that orders any act to be done in addition to the payment of money, is not a Bill of Exchange. Sub-section (2), Section 3.

Let us now test a cheque by these conditions.

It must be in writing; it must be an order to pay; this requirement is met by the single peremptory word, printed on its face: "pay." It must be for a sum certain in money. An order to pay over a specified parcel of Government bonds or other liquid securities would not be a cheque. The order to pay must be unconditional; any condition imported into the wording of the instrument vitiates it as a cheque. It must be signed by the drawer, and it must be addressed to a bank as the party who is to obey the order to pay. The name of the bank printed above the actual order to pay (in the orthodox form of cheque) is the name of the addressee of the order. Of the alternative forms of stating the time for payment, only one is available for a cheque, viz., "on demand"; the definition of cheque requires it to be on demand. The order addressed to the bank may be to "pay to bearer," or to pay to a specified person, e.g., "Pay to John Smith," or to pay to the order of a specified person, e.g., "Pay to John Smith or order." In practice, the striking out of the printed word "bearer" on the orthodox form of cheque, is equivalent to requiring it to be payable to the order of the specified person.

An instrument purporting to be or intended to be a bill of exchange, but which does not fulfil the foregoing statutory conditions is not a bill of exchange. It may be operative as an assignment of funds; it may be some unclassifiable kind of contract or undertaking, or it may be devoid of legal effect. An instrument purporting to be or intended to be a cheque but which does not fall within the foregoing statutory definition of a cheque, is not a cheque. It may be some other form of bill of exchange; or it may be an assignment of funds, or an unclassifiable document, or it may be devoid of legal effect.



Section 10 of the "Bills of Exchange Act, 1908," defines the term, "payable on demand." It provides that a bill is payable on demand: (a) if it is expressed to be payable on demand; (b) if it is expressed to be payable "at sight," or (c) if no time for payment is expressed therein. These provisions would be exemplified respectively if the peremptory words of a cheque were (a) On demand pay to, etc.; (b) At sight pay to, etc.; or (c) Pay to. The last formula is the orthodox one.

**(b) Presentment for Payment.**

As a cheque is an unconditional order to pay, addressed to a bank, it must be presented to the bank, if the holder requires payment. As it is, and must be, payable on demand, no previous notice, or opportunity for "sighting," is necessary. It is payable on demand and presentation constitutes demand.

A cheque should be presented for payment within a reasonable time of its issue. What is a reasonable time is a question of fact to be settled by reference to all the facts of the particular case. The nature of the cheque, the usages of trade and of bankers enter into the facts of any given case. If a cheque were given to a salaried officer in payment of salary due to him by the drawer those facts would seem to shorten the period between issue and presentment that should be deemed to be reasonable. The banks in New Zealand have an unwritten rule that would probably receive judicial notice in appropriate cases; it is that a cheque that has been outstanding for more than six months after issue is not presented within a reasonable time. It is their custom, ordinarily, to refuse payment of such cheques for the purpose of protecting the customer-drawer. This refusal does not affect the liability to pay that subsists between the drawer and the payee of the cheque; the bank acts in view of the relationship between it and its customer, and views the order and authority to pay as having lapsed by effluxion of time.

Apart from this implied revocation of the order to pay (which does not affect the rights of the payee against the

drawer) the importance of presenting a cheque for payment within a reasonable time lies in the fact that by the operation of section 74 any loss to the drawer occasioned by the delay in presentment must fall on the holder of the cheque, and the drawer is, to that extent, discharged from the holder's claim. This rule operates only if at the time the cheque is presented, the drawer is entitled to have the cheque paid. If, therefore, the banker should have suspended payment in the meantime, the delay might obviously involve the drawer in loss, for he cannot recover his funds from the banker, whilst he is (apart from this provision) still liable to pay to the holder of the cheque a debt which would have been discharged if the cheque had been presented within a reasonable time. If this should occur, the holder of the cheque cannot recover the amount from the drawer but he becomes the creditor, in lieu of such drawer, of the banker.

**(c) Revocation of Bankers' Authority to Pay.**

It is provided by section 75 of the "Bills of Exchange Act, 1908" that the duty and authority of a banker to pay a cheque drawn on him by a customer are determined by:—

- (a) Countermand of payment:
- (b) Notice of the customer's death:

Countermand of payment is a formal act of the drawer of a cheque, communicated to the banker on whom it is drawn. A countermand of payment must be actually communicated to the bank. "There is no such thing as a 'constructive' countermand in a commercial transaction of this kind" (per *Couzens-Hardy*, M.R. (1908), 1 K.B., at page 298). The onus is, therefore, on the customer to see that the countermand actually reaches the banker. The banks invariably keep a printed form, popularly known as a "stop payment notice" to facilitate this notice and its procedure for recording and filing such notices. The notice may, however, be by letter or any other form that communicates to the bank the withdrawal of the authority and order to pay. It may be given by telegram, *Curtice v. London City and Midland Bank* (1908),

1 K.B. 293, 298. There seems no reason in law why the countermand of payment should not be given by word of mouth, but for obvious practical reasons it is undesirable. In the event of dispute between banker and customer as to whether the payment were countermanded, the matter might be incapable of proof.

All countermands of payment are noted in red ink prominently on the current folio of the customer's ledger account, and it should be second nature to the ledgerkeeper to note the presence of such a minute immediately the folio is turned up. If a cheque is paid after the customer has countermanded the order it contains, the bank cannot claim to debit the amount to the customer's account.

Notice of the death of a customer involves revocation of the bank's authority to pay that customer's cheques and all cheques presented after the banker has notice of the death, should be returned unpaid with the answer "Drawer deceased."

It should be noted that where one of two joint holders of a bank account dies, the rule is ordinarily that the survivor has the right to continue to draw on the account and the bank is justified in honouring his cheques on the joint account. To remove all doubt, it is advisable when opening a joint account (or accepting a joint deposit account) to take definite instructions in writing covering the right by survivorship to operate on the account, or withdraw the deposit, as the case may be.

#### **(d) Crossed Cheques.**

Two kinds of crossings are recognised and defined by Section 76 of the "Bills of Exchange, 1908." They are described as "General Crossings" and "Special Crossings."

A general crossing consists of two parallel transverse lines across the face of the cheque. They are generally (and should be, for legibility and convenience) drawn across the centre of the body of the cheque, and placed about three-quarters of an inch, to an inch apart. By an interesting old custom survival the words "and Company," or "bank," or any abbrevia-

tion of those words may be written between the transverse lines, but their presence or absence, as the case may be, has no effect on the crossing.

A special crossing consists of the name of a banker written across the face of the cheque. Thus a cheque drawn on the Bank of New Zealand at Auckland may bear, written transversely across its middle, the words "National Bank of New Zealand Limited." That addition constitutes a special crossing and the cheque is said to be crossed specially to the National Bank of New Zealand Limited. It is usual, when making a special crossing, to draw the two transverse parallel lines and write the name of the banker between them, and that custom certainly tends to draw attention more readily to the crossing; but it is not necessary to do so; the special crossing is defined by the act as being the addition to a "cheque" (not a "crossed cheque") of the name of a banker.

#### **(e) Effect of Crossings on Cheques.**

##### **(a) General Crossing.**

Crossings are instructions and warnings to the paying bankers of crossed cheques. A general crossing (q.v.) is an instruction to the paying banker to pay the cheque only to a banker. If the paying banker, in good faith and without negligence so pays it to a banker he is protected from any claims that might be made by the true owner of the cheque, if, in fact the cheque has been the subject of dishonest dealings. In the words of Section 80 of the "Bills of Exchange Act, 1908," if the paying banker so pay it (*i.e.*, in good faith and without negligence, to a banker) he shall be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner of the cheque.

We shall, for a better understanding of this position, exemplify it by setting out a few suppositious cases.

*Case 1.* William Black draws a cheque on the Mercantile Bank of New Zealand at Wellington, crosses it generally and hands it to his creditor Thomas White in settlement of a debt. White pays it to credit of his account with the Bank of Austra-

lasia at Wellington and through the exchanges it is presented to the Mercantile Bank by the Bank of Australasia and duly paid by the Mercantile Bank. That is a normal transaction, the true owner collected his own cheque and received the proceeds. The Mercantile Bank paid in accordance with the crossing, but it needs no protection because the whole transaction with the cheque was honest and no claim against the bank could arise.

*Case 2.* Assume the facts to be the same as in Case 1, up to the receipt of the cheque by Thos. White. White loses the cheque; it is picked up by Denis Gray who cashes it at the shop of Willie Green. Green pays it into his account at Union Bank of Australia; that bank presents it to the Mercantile Bank and it is paid. White institutes an enquiry and the cheque is traced back to Green. White is the true owner and, *at common law* is entitled to recover the amount of his cheque from any person who "converted" the cheque, or assisted in its conversion. He is thus entitled *at common law* to recover from Green who has converted his cheque and procured the proceeds, or from the Union Bank who assisted Green as his agent, or perhaps from the Mercantile Bank who paid the proceeds to Green through his banker.

We may see elsewhere how Green might be protected by the special protection of the "holder-in-due-course" provisions of the Act and how the Union Bank may be protected as a bank collecting for a customer, by the provisions of Section 82, but for the present we are concerned with the position of the paying banker, the Mercantile Bank. That Bank, without negligence and in good faith, paid the cheque to a bank, and it is therefore protected. Although the proceeds have reached the wrong person, and the real owner is asserting his rights, the Mercantile Bank is, by the provisions of Section 80, entitled to the same rights, and to be placed in the same position, as if payment of the cheque had been made to White.

*Case 3.* Assume the facts the same as in Case 2, down to the point where Denis Gray finds the cheque. Gray takes the

cheque to the Mercantile Bank, presents it to the teller after indulging in a little pleasant talk on sporting events. The teller, knowing that Black is quite good for the amount, and unwilling to ask such a pleasant sporting gentleman as Gray to present the cheque to the ledgerkeeper first, fails to notice that it is crossed, and cashes it. White, in these circumstances can recover from the bank by refusing to allow the debit to his account. The cheque crossed generally has not been paid to a banker, and the paying bank cannot claim the protection of Section 80.

*Case 4.* Black draws the cheque on the Mercantile Bank, crosses it generally, and hands it to White. White takes it direct to the Mercantile Bank and the teller, who knows White, cashes it. Again the paying bank has ignored the warning and instruction, and has taken a risk by cashing the cheque, but as the true owner has received the proceeds, no adverse claim can arise.

*General.* In practice, the Banks treat their own branches as separate banks for the purposes of paying crossed cheques. Thus, the National Bank at Wellington, which would refuse to cash a crossed cheque over the counter at Wellington, will without question pay it if it is received in its internal exchanges from its own branch at Palmerston North. This practice has been in force for many years and prior to 1905 any bank adopting it was not protected by Section 80; its only remedy, if any cheque so paid should prove to have been wrongfully taken from the true owner, would have been recourse against its own customer at the collecting branch. In 1905, however, the law was amended by the enactment of a new provision which now appears as Section 83 of the "Bills of Exchange Act, 1908." It runs:—"Where a banker carries on the business of banking at more branches than one he shall, for the purposes of Sections 76 to 82 hereof, be deemed to be an independent banker in respect of each of such branches." Therefore on a transaction such as described above, the bank would be protected, for, the National Bank at Wellington, in paying the proceeds to the National Bank at Palmerston

North, would be deemed to have paid it to an independent banker.

**(b) Special Crossing.**

A special crossing is also an instruction and warning to the paying bank of the cheque so crossed. Like a general crossing it warns him that he must pay only to a bank, but, being a special crossing it warns him that he must pay only to the bank named in the crossing. If the paying banker, in good faith and without negligence, so pays it to that banker he is protected from any claim that might be made by the true owner of the cheque, if, in fact, the cheque has been the subject of dishonest dealings. The position is the same as that created by a general crossing except that the payment in the case of a special crossing must be made to the particular bank named in the crossing, whilst in the general crossing the payment may be made to any bank. The special crossing is therefore more restrictive than the general crossing.

**(f) When and by Whom a Cheque may be Crossed.**

(1) A cheque may be crossed generally or specially, by the drawer. This is the usual practice.

(2) When a cheque is uncrossed, the holder may cross it generally or specially. This is frequently done, by the holder, as a precaution against the risk of loss of the proceeds. An uncrossed cheque is payable on demand and cashable across the bank's counter with no record of the presenter. The crossing when added, ensures that the cheque is credited to some bank account, and thus the true owner can trace it to the recipient of the proceeds at its payment.

(3) When a cheque is crossed generally, the holder may cross it specially. This is frequently done. It increases the protection of the crossing for it limits possible recipients of the proceeds at payment of the cheque, to persons whose accounts are kept at the bank named in the crossing. The

usual practice is for the holder to convert a general into a special crossing by adding the name of his own bank. A practice is common of adding to the special crossing, the words "Account payee only," or "Account Thomas Black only." This practice has no statutory recognition, and is no part of a special crossing. See page 307, where this point is further dealt with.

(4) Where a cheque is crossed generally or specially, the holder may add the words "Not Negotiable." The precise meaning and effect of these words is dealt with elsewhere, see page 313. They do not make the cheque "Non-negotiable" (*Great Western Railway Company v. London and County Banking Co.* (1901), A.C. 414). It may change hands honestly and for value twenty times thereafter, each transfer being a valid negotiation of the cheque, and the final holder being a holder in due course. Briefly stated it may be said that the addition of the words "Not Negotiable" make the cheque *potentially* non-negotiable, and if at any time thereafter a dishonest or unauthorised transaction makes a break in the chain of honest and valid negotiations, no subsequent holder can get a good title to the cheque.

(5) When a cheque is crossed specially, the banker to whom it is crossed may cross it specially to another banker for collection. The definition that we have given above of a special crossing shows that it consists in the addition to the face of a cheque of the name of the banker. Thus Thomas White receiving a cheque, and desiring to lodge it to credit of his account with the Bank of Australasia at Wellington, decides to secure to himself the special protection afforded by the special crossing. He therefore crosses the cheque with two transverse lines (this as we have pointed out is not strictly necessary) and between the lines he writes "Bank of Australasia at Wellington." The cheque is now a specially crossed cheque being crossed to the Bank of Australasia at Wellington. When White takes that cheque to his bank and lodges it, the teller will note that the cheque



is crossed to his bank, and he will accept it accordingly. He would not have accepted it had it been crossed to say, "The National Bank of N.Z. Ltd., at Christchurch." The Bank of Australasia at Wellington having now received this cheque must, to effect collection of the proceeds for its customer, present it to the bank on which it is drawn.

We shall suppose that it is drawn on National Bank of N.Z. at Nelson, this being a town in New Zealand at which the Bank of Australasia has no branch. It cannot therefore send the cheque through its own branches by its own internal system of exchange for the purposes of making presentation; it is obliged to use the services of another bank. Its officers know that the Union Bank has a branch at Nelson, and, therefore, pursuant to existing arrangements, they hand this cheque, paid in by White, over to the Union Bank for the purpose of having it presented to the National Bank at Nelson for payment. We have seen, however, that the cheque is crossed specially to the Bank of Australasia at Wellington, and if, therefore, it is presented for payment at the National Bank at Nelson by the Nelson branch of the Union Bank, the paying banker would ordinarily refuse to pay it, because he would, by so doing, be paying it to a banker other than the banker to whom it is specially crossed. It is to meet such a position that the provision we are now considering has been enacted. The Bank of Australasia will have a rubber stamp in the form of a crossing available for such purpose and it will with this stamp impress across the face of the cheque. This stamp contains some such words as the following "The Union Bank of Australia Ltd. as agent for collection for the Bank of Australasia." The paying banker seeing that stamp on the cheque will know that the Union Bank which is actually presenting the cheque is the agent for collection for the Bank of Australasia, and he will pay it accordingly.

(6) Where an uncrossed cheque, or a cheque crossed generally is sent to a banker for collection the banker may cross it specially to himself.

It may be pointed out here that the custom of banks when receiving cheques for collection is to impress them on the face with a rubber stamp, bearing the name of the bank. A cheque thus stamped can always be traced back to that bank, for the stamped impression shows the name and branch of the bank, and, usually, the date of the impression of the stamp. This impression by a rubber stamp, of the name of the bank, constitutes a special crossing, for it should be noted again, as pointed out above, that the two traverse lines are no necessary part of a special crossing; the addition of the name of a banker across the face of a cheque itself constitutes a special crossing.

This procedure is specially authorised by the provision we are now considering. The banker who puts his bank stamp on the face of a cheque, crosses it specially to himself. It should be noticed that the provisions we are referring to permits him to do this to two classes of cheque only; they are, (1), an uncrossed cheque, and (2), a cheque crossed generally. The banker may adopt this protection in regard to such cheques only when they are sent to him for collection.

**(g) Crossing is a Material Part of a Cheque.**

It is provided by Section 78 of the Act that a crossing authorised by the "Bills of Exchange Act, 1908" is a material part of the cheque, and no person may obliterate a crossing, or, except as authorised by the foregoing provisions add to a crossing, or alter a crossing.

In another part of the Act there are provisions relating to what are called "material alterations" of cheques or other forms of bills, and it is provided that the effect of material alteration is to render the bill invalid in the hands of the person who originally makes such alteration, and all subsequent parties, with certain safeguards designed to protect a holder in due course when the alteration is not apparent.

The effect of Section 78, which we are now considering is to make it clear that the obliteration of a crossing, or unauthorised adding to, or alteration of a crossing, is a material alteration of a cheque, and will invalidate it in the hands of a person who makes such material alteration and also generally speaking, in the hands of subsequent holders.

It should be noted that a collecting banker's right to add to a crossing is limited to provisions 5 and 6 above. Firstly, when the cheque is crossed specially to the collecting banker, he may cross it also to another banker who is to be his agent for the purpose of collecting it. Secondly, under paragraph 6, he may cross either an uncrossed cheque, or a cheque crossed generally, so as to make it a cheque crossed specially to himself.

This is important. There are certain other protections and rights given by Section 82 to collecting bankers who collect *crossed cheques* for customers. These protections and rights are not available to a banker who collects an uncrossed cheque for a customer. A banker who accepts an uncrossed cheque from his customer for collection cannot increase his own rights and protection by himself crossing the cheque generally or specially to himself, and thereafter claiming to be a banker who is collecting a crossed cheque.

#### **(h) Cheques Crossed to More Than One Bank.**

Where a cheque is crossed specially to more than one banker, the ordinary rule is that the banker on whom it is drawn, i.e., the paying banker, will refuse payment thereof. The usual procedure is for the paying banker to return the cheque, first endorsing on it the answer "Crossed specially to more than one bank."

There is an exception to this rule and we have noted it above in paragraph 5 (page 303), relating to crossings of cheques after issue. It is that a banker, having a cheque crossed specially to himself, may cross it to another banker, so that the other banker may act as his agent for collection. Section 79 of the Act recognises this circumstance and this

procedure as making an exception to the rule that the paying banker must not pay a cheque which is crossed to more than one banker.

**(i) Cheques Crossed "Account Payee Only."**

A reference will be found on page 303 to a custom, now well established, of adding to the crossing of a cheque crossed generally, the words, "Account payee only," or "Account Thomas Black only" or some other short formula of like import. The words are generally written between the transverse parallel lines.

Such an addition to a cheque does not constitute a "special crossing," and the practice in question has no statutory recognition. It is not an instruction to the paying banker, as (see page 302) a special crossing is.

At the same time the practice, as a custom of users of cheques, is so widely adopted, that collecting banks who are required to act in the collection of cheques without negligence, cannot safely ignore it. When Thomas Black receives from the drawer a crossed cheque payable to himself, he adopts this practice by writing across the cheque "Account payee only," or "Account Thomas Black only" for the purpose of ensuring that the only further dealing with the cheque can be its lodgment to credit of his bank account. If a banker thereafter accepted such cheque as a lodgment to credit of Henry White, he could hardly meet Thomas Black's claim, on an action for conversion, by pleading that he had acted without negligence and was therefore entitled to the protection of Section 80 of the Bills of Exchange Act.

For obvious reasons a banker should not open an account for, say, Thomas Black, with a cheque so crossed unless he was satisfied as to the identity of the person lodging the cheque.

This form of crossing received judicial notice in *Ladbroke and Coy. v. Todd*, III L.T. 43. There, the learned judge said, "This particular crossing has been in use too long for it to

be disregarded, and it must be taken to convey an intimation to the collecting banker that the proceeds of the cheque are only to be placed to the specific account. It is therefore a custom of most bankers to decline to take the cheque for any other account, and a disregard of the intimation would probably be deemed negligence." In *Halsbury's Laws of England*, Vol. 1, p. 595, the learned author, dealing with this practice says that this form of crossing puts the collecting bank on enquiry.

### (3) Certain Doctrines Peculiar to Bills of Exchange.

#### (a) Negotiability.

We have seen that Section 80 of the "Bills of Exchange Act, 1908" protects the paying banker in certain circumstances where the true owner of the cheque might otherwise have a claim against him. It will be useful and interesting to examine this matter more closely.

Section 80 of the Act, in so providing, protects the banker against claims for "wrongful conversion"; that being a common law term used to describe that particular legal wrong. Under the doctrine of conversion any person who purports to sell, give or dispose of the property of another, without the authority or permission of that other, is liable to the true owner for any loss or damage he suffers thereby. This is so even if the person so acting, does so in good faith and on instructions from one whom he believed to be competent to give such instructions lawfully.

Thus, if Henry Smith places certain furniture or family plate in the hands of an auctioneer for sale, and the auctioneer, having no reason to suspect them to be the subject of dishonest dealing, but acting entirely in good faith and in the ordinary course of his business, should sell that furniture or plate, and it should then transpire that the property really belonged to Henry Jones, who had not authorised the sale, the auctioneer is liable to Jones, because he has converted Jones's property. The auctioneer's remedy would be against Smith, from whom he took instructions.

If Section 80 were cut out of the "Bills of Exchange Act, 1908," there would be no ground for claiming that a cheque should be viewed as being on any different footing from that of furniture or family plate, or that a banker should be treated differently from an auctioneer if he assisted to convert property to the detriment of the true owner. The banker, by paying the amount of the cheque to a person who proved to be not the true owner, would be liable according to the ordinary principles which govern an action for conversion. To leave this rule applicable equally to cheques and furniture might make our law as a whole more consistent than it is; but it would make the business of banking as it is now organized and conducted, quite impossible. No banker could carry on business under such risks and hence the Bills of Exchange Act includes this provision for the protection of paying bankers.

There are two classes of persons who might find themselves equally liable to be innocent victims of the common law doctrine of conversion if the Bills of Exchange Act did not intervene for their protection.

The first class comprises collecting bankers; those bankers who receive from their customers cheques drawn on other banks and who pass such cheques through their exchange system to ensure their presentation to the paying bankers and collection of the proceeds on behalf of the customers who lodge them. They also are open to the risks attendant on assisting in the conversion of property on behalf of a customer who may prove to have no title to such property. For the protection of collecting bankers, a special, but carefully defined and limited immunity, is granted by Section 82 of the Bills of Exchange Act. We shall examine that section later in this chapter.

The second class of persons whose daily business operations with cheques would leave them open to the risks of actions for conversion at the suit of "true owners" of misappropriated cheques, comprises all those business and professional men and corporations who handle cheques as

part of the normal medium of settlement of transactions, according to our established trading and financial habits. It is estimated that quite 85% of the debt-settlements made in this Dominion are effected by the use of cheques, as a species of currency token. The universality of this practice, and its great commercial convenience have led to the enunciation of a rule of limited and conditional negotiability in relation to Bills of Exchange, and in practice it relates principally to cheques. The rule is stated by defining a "holder in due course" of a cheque or other kind of bill, and enacting that such a holder of a cheque or bill shall hold it free from any defects of title in the party from whom he received it. Thus, if a thief steal a wallet and a cheque, he obviously has no right in, or title to, either. Having no right to or property in the wallet, he cannot bestow a title to it on another, for no man can give or bestow what he does not possess. If he should purport to sell the wallet to one who took it in perfect good faith, that buyer would possess no property in the wallet and could be compelled to restore it to the true owner. If he had in the meantime transferred it to another innocent purchaser and it then passed successively to three equally honest holders who purchased it in good faith, none of such subsequent holders would acquire a good title; but each of them would be liable to be compelled to restore the wallet to its true owner.

Originally the cheque was in the same position, but now, for business convenience, and in view of the important part that such bills of exchange play in our commercial and financial system, it is vested with a qualified attribute of negotiability by virtue of which one who has no title, or a defective title to a cheque, can nevertheless bestow a good and indefeasible title upon another. That effect follows whenever the party taking such a cheque or bill is a "holder in due course."

**(b) Holder in Due Course.**

The term "holder in due course" is defined by Section 29 of the "Bills of Exchange Act, 1908." He is one who

has taken a bill complete and regular on the face of it, under the following conditions:—

- (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;
- (b) That he took the bill in good faith and for value, and at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

It should be noted that a holder in due course, of a cheque, is defined by a careful setting out of the conditions under which a cheque may be taken so as to bestow a good title on the recipient. The cheque must be complete and regular on the face of it; it must not be overdue; it must not have been dishonoured to the knowledge of the recipient; that recipient must take it in good faith and for value; and he must be without any knowledge of any defect in the title of the person who negotiates it to him. All of these conditions must co-exist; unless all six of them are present in the circumstances of the delivery of a bill, the recipient is not a holder in due course.

It is considered well worth while to tabulate and exemplify these conditions; they are:—

- (1) The bill must be complete and regular on its face.
- (2) It must be current, that is, not overdue.
- (3) The intending holder must not have had notice of a prior dishonour of the bill.
- (4) The holder must take it in good faith.
- (5) The holder must have no notice of a defect in the title of the person who negotiated it to him.

The following examples are submitted to illustrate the provisions:—

- (1) William Harrison receives a cheque from Henry Jones; it is dated and signed, but the amount is blank. Jones says to Harrison “ I received this cheque from Gibbs, who instructed me to fill it up for ten pounds; that being the amount I owe you, please take it and fill it up for ten



pounds and that will effect settlement of my debt." If Harrison takes this bill in these circumstances, he is a holder, but not a "holder in due course," because the bill is not complete and regular on the face of it; even though the bill will be good, if it is filled up in accordance with authority. Harrison takes this cheque subject to all defences that would have been available against Jones.

At this point the provisions of Section 20 of the "Bills of Exchange Act, 1908" (q.v.) overlap or coincide with the provisions we are now considering.

(2) William Harrison is pressing his debtor, John Smith, to procure payment of a debt. Having procured all that is available in the way of immediate payment from Smith, Harrison decides to take for what it is worth, a past-due bill given to Smith by Jones. Harrison is not a holder in due course of this bill, because it is overdue and Jones can set up in defence against Harrison any defence that he could have set up against Smith, e.g., failure to present, or lack of consideration. A cheque that has been held for an unreasonable time after its issue, (say, for twelve months) would be "overdue," and the recipient would not be a holder in due course.

Such a bill or cheque is in effect on the footing of a cheque marked "Not Negotiable."

(3) The facts may be taken to be as stated in paragraph (2), but with the understanding that the bill is one that was dishonoured by non-acceptance, and that Smith tells Harrison so. It may be that the bill will eventually prove good and enforceable against the drawer, but the point that we are at present concerned with is that Harrison is not in these circumstances a *holder in due course*.

(4) Harrison takes a cheque from Atkins for the purpose of endeavouring to recover payment on Atkins's behalf in circumstances where Atkins himself would be unable to recover. We may suppose that Harrison knows that the cheque was obtained by fraud or duress by Atkins. In such case Harrison cannot be said to have taken the bill in good

faith and cannot enforce due payment of it at maturity any more than Atkins could; in other words, he is not a holder in due course.

(5) Harrison presents to his wife for a birthday present a cheque, drawn by a third party. In this case the recipient, the wife, is not a holder in due course as she has not given value; she receives no better title to the bill than her husband had, and if his title is defective, her title is equally so.

(6) Harrison takes a cheque from another person, well knowing that that person obtained the cheque by fraud, or in respect of an illegal consideration. In such a case he is not a holder in due course for he is not taking it without notice of defect of the title of the person who negotiated it to him.

A holder in due course has a good title to the bill so held. His title is unaffected by defects in the titles of any previous holders and therefore, when a bill of exchange is the subject of dealings and transfers, a man may bestow what he does not possess, i.e., a good title. Reverting therefore to our supposititious case of the thief who stole a wallet and a cheque, we see that no number of subsequent dealings with the wallet can divest the true owner of his property in it. In the case of the cheque however, if it is complete and regular on the face of it, and the thief passes it on to one who in good faith and for value, receives it, the transferee may acquire a good title to it and lawfully claim to retain it, or its proceeds, even as against the true owner from whom it was stolen. That is the doctrine of negotiability in relation to cheques; without it, the present free use of cheques as a part of our commercial currency would be impossible.

### **(c) The "Not Negotiable" Crossing.**

Section 81: Where a person takes a crossed cheque bearing on it the words "Not Negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

There is perhaps no section in the Bills of Exchange Act more misunderstood than this; there is probably no daily transaction so often performed by business men with an erroneous view of its meaning and effect.

We have already pointed out that the effect of this crossing is not to prohibit transfer of the cheque; it is not, necessarily, to affect, in the slightest degree, the results of transfers of the cheque. A cheque so crossed, may, between the occasion of its issue by the drawer and the occasion of its payment by the banker, pass through a dozen hands and each holder may be a holder in due course.

The effect of this crossing may be said to lie latent until loss of the cheque or a dishonest dealing with it deprives the true owner of its possession, and places it in the hands of one whose title is consequently defective. Thereafter, no subsequent holder can acquire a good title, no matter how honest or innocent the transaction by which he acquired it; the true owner may recover the cheque or the proceeds from him when he succeeds in tracing it.

The effect of the not negotiable crossing may be described also by reference to the status of the furniture and family plate (as subjects of sale or other transfer) as dealt with on page 308, *supra*. The effect is to deprive the cheque of the peculiar quality of "negotiability" which, it enjoys as a bill of exchange, and place it back on the "non-negotiable" level of the chattel.

Thus, if I sell my office desk to John Jones, handing possession of the desk to him and receiving cash in payment, Jones acquires a good title to the desk. He would acquire an equally good title to a "not negotiable" cheque which I, an honest holder in due course, transferred to him in good faith and for value. If, however, a dishonest employee, without my knowledge or authority purported to sell my desk to Jones, the purchaser would acquire no title to it, even though he paid over its full value to get possession of it. Similarly—if my dishonest clerk transferred a cheque

crossed "not negotiable" to Jones, the cheque being my property, Jones acquires no title, no matter how innocent or honest he may have been in the transaction. The desk and the "Not Negotiable" cheque are, in this respect, on the same footing. Contrast this position with that of the ordinary bill of exchange under the doctrine of negotiability, *vide* page 308.

#### **(4) Crossed Cheque and the Collecting Banker.**

We would again call attention to the statement of the doctrine of negotiability on page 308, as applied to cheques, and also to the liability that rests on a person who assists, even though innocently, in the conversion of another person's property. Without special provision to the contrary in the Bills of Exchange Act there is not the slightest doubt that a banker acting as an agent for a customer would be in the same position as an auctioneer who acted as agent for his client, if subsequently it should be found that the bank's customer or the auctioneer's client had not a good title to the form of property submitted.

Banking business as carried on at present would be impossible if the law were left in this position and therefore a special provision has been enacted to protect collecting bankers. It is to be found as Section 82 of the "Bills of Exchange Act, 1908," and it runs thus:—

- (1) Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.
- (2) The protection afforded to a banker by the last preceding sub-section shall also apply where a cheque as therein mentioned has in the ordinary course of business been credited to the account of a customer before it has been collected, and

whether or not the customer has, before the cheque has been collected, drawn against the credit thereby established or indorsed the cheque.

This section represents a protection for a special class of persons, and it takes the form of abrogating, for their peculiar benefit, a well-established rule of the common law. It is impossible to effect this purpose without taking away, to a corresponding extent, a protection otherwise claimable by other persons. In other words, the benefits hereby added to the banker's rights are subtracted from the rights of cheque-owners. In these circumstances, following a well-established rule for the construction of statutes, the provision in question must be interpreted very strictly, for the rights of cheque-owners must be reduced no more than the strictest interpretation of Section 82 requires. It is important therefore to note the four conditions which must co-exist before a bank can claim the protection of this section. They are:—

- (1) The bank must act in good faith.
- (2) The bank must act without negligence.
- (3) When collecting the cheque, it must receive payment for its customer.
- (4) The cheque must be crossed generally, or specially to the collecting bank.

N.B.—*There is no protection for a banker COLLECTING uncrossed cheques.*

The effect of this present Section 82 is very thoroughly discussed in the report of an English case of great importance to bankers. It is: *Gordon v. Capital and Counties Bank*, where a bank innocently and without negligence had collected cheques for one who, as it was afterwards ascertained, had obtained them dishonestly. The question was, whether or not the bank which had facilitated the fraud by collecting the cheques was liable, and it was agreed on all sides that it was liable, unless it could claim the protection of Section 82.

In the course of his judgment delivered in the House of Lords, in this case, Lord Lindley said: "If this case had to be determined on general principles of English Law apart from statutory enactment, the bank would have no defence to Gordon's action. He could recover the value of the cheques either in an action of conversion or in an action for money had and received. A long series of well-established authorities which cannot, I apprehend, be now questioned, establishes the liability of the bank beyond all dispute; nor was this seriously questioned by the Counsel for the bank. But in this case, reliance is placed on Section 82, . . . . ."

To assist ourselves to a better understanding of the effect of Section 82 we may usefully look into the facts, to which it was applied, in Gordon's case. We find that Gordon carried on business under the name of "Gordon and M." He had a trusted clerk named Jones, who for some years had been fraudulently carrying on a business of his own, and bolstering it up by a misappropriation of cheques received by Gordon. To facilitate this, Jones had opened an account with the Capital and Counties Bank, and into this he had paid cheques which he stole from his employers. Some cheques were uncrossed, some were crossed, some were payable to bearer, some were payable to order; and the misappropriation also included bank drafts issued by banks on their own branches. When any of these cheques were "payable to order" Jones forged the endorsement. After all the evidence had been taken the jury found that the Capital and Counties Bank had acted in good faith and that it had acted without negligence.

The evidence established that the custom of the bank had been to credit Jones with the amounts of these cheques immediately he paid them in, and he had been allowed to draw against them. If any of these cheques had been dishonoured, they would, of course, have been debited to Jones's account, but this never happened.

On these facts, the first question of law for the Court was: Did the Capital and Counties Bank collect these cheques for its customer, Jones, or, having already credited Jones with the proceeds, did the bank collect the cheques to recoup itself? In other words: Did the bank receive payment as an agent for its customer or did it receive payment as an owner?

It was held by the House of Lords that the bank was not entitled to the protection of Section 82 because, having previously credited Jones with the amounts of these cheques, it subsequently collected them to recoup itself.

The House of Lords held further that the protection given by Section 82 applies only to cheques which are crossed before they are received by the banker. Section 77, sub-section (6), does not assist the banker in such a case. In other words, a banker is not entitled to receive an uncrossed cheque for collection and then, under Section 77, sub-section (6), to cross it and treat himself as protected thereby under Section 82.

The House of Lords held further that a bank draft payable to order on demand addressed by one branch of a bank to another branch of the same bank, is not a cheque within the meaning of Section 73 of the Bills of Exchange Act, and therefore, in respect to these instruments the bank was entitled to no protection. The reason underlying this ruling is that such an instrument could not be said to be "drawn by one person on another." The bank, including all its branches, was one party only.

It was also held in this case that there is no protection for a banker who collects uncrossed cheques (and this must be taken to mean cheques uncrossed at the time they are paid in) on behalf of a customer, if it should turn out that the customer had no title or a defective title. The banker who collects such uncrossed cheques is liable in conversion to the true owner, and his only remedy is his recourse against his customer. A banker, therefore, should collect uncrossed cheques only for customers whose stability is sufficient to make this right of recourse a proper protection.

In an earlier case—

*The Great Western Railway Coy. v. The London and Counties Bank*, (1901) A.C. 414, the House of Lords had to consider the question as to what constitutes a customer. In that case a dishonest man had obtained cheques which belonged to the Railway Company, and had taken them to the branch of the defendant bank where he obtained cash for them. It was proved in evidence that this man had been habitually attending at this bank for some years, presenting cheques in this way for cash and sometimes paying parts of these into customers' accounts. The bank had no account in his name, however, and he had no pass-book, and it was held that he was not a customer of the bank and that, therefore, the bank had no protection under Section 82.

*The Gordon Case* (*Gordon v. Capital and Counties Bank*, *supra*), when the decision was first made known in 1903, was a veritable bombshell to bankers. Bankers of thirty years' standing will well remember the consternation it caused. It was undoubtedly good law, but it revealed a state of law which made banking business unsafe. The Imperial Parliament lost no time in passing remedial legislation, and the various Parliaments of the Empire followed suit. Within a few years the loopholes revealed by the judgment were blocked up. In New Zealand the position was met by "The Bills of Exchange Amendment Act, 1905," and its three provisions may now be traced into the "Bills of Exchange Act, 1908."

Firstly, to meet the position created by a bank draft drawn by one branch of a bank on another branch of the same bank, failing to conform to the definition of a bill of exchange, there are two special provisions. The first is to be found as Section 83 of the 1908 Act. It runs thus:—

Section 83: Where a banker carries on the business of banking at more branches than one he shall, for the purposes of sections 76 to 82 hereof, be deemed to be an independent banker in respect of each of such branches.



The second is to be found as Sub-section 2 of Section 60. That section protects bankers who pay bills of exchange payable on demand from liability in cases where the endorsement on the bill (if any) proves to be forged. The added provision is in terms almost identical with those of Section 83 quoted above; it makes a draft drawn by one branch of a bank on another branch of that bank a bill of exchange for the purposes of Section 60.

The third of the remedial provisions traceable to the decision of the House of Lords in the *Gordon Case* is to be found as sub-section 2 of Section 82, quoted in full on page 315, *q.v.* That provision substitutes an arbitrary statutory definition of the words "receives payment for a customer," as they appear in sub-section 1, for the meaning which the House of Lords attributed to those words.

#### **(5) Crossed Cheques.—(A Summary).**

- (1) The provisions of the Act in relation to crossed cheques (except that defining the effects of "not negotiable") define rights and liabilities of bankers, and bankers only. Section 80 affects paying bankers and Section 82 affects collecting bankers.
- (2) The "Not Negotiable" crossing has very little, if any, effect on bankers and their rights and liabilities. It is a protection to true owners of crossed cheques, and a warning to all persons to whom they are tendered by way of intended negotiation.

#### **(6) Other Forms of Bills of Exchange.**

We have dealt in the immediately preceding pages with that form of Bill of Exchange which is known as a cheque. As we have seen on page 294, the cheque is defined by Section 73 of the Bills of Exchange Act as "A Bill of Exchange drawn on a banker payable on demand." There are two other forms of Bills of Exchange in common use.

They are the forms known as an "Acceptance" and as a "Promissory Note" respectively. Reference may usefully be made at this stage to the definition of Bill of Exchange quoted from Section 3 of the "Bills of Exchange Act, 1908," on page 294 of this work. It will be seen that it must be in writing, that it must comprise an unconditional order to pay a sum certain in money, either on demand or at a fixed future or determinable time, and it must order this payment to be to bearer or to a specified person. We have already noted how the essentials of this definition appear in that form of Bill of Exchange known as a cheque. We shall now trace them into the forms known as the Acceptance and the Promissory Note. It might be helpful to point out at the beginning of this study that the difference between these two forms is really slight. In popular language it might be said that the difference between these two forms is that the Promissory Note originates with the debtor who says, "I promise to pay my debt to you," whilst the Acceptance originates with the creditor who says, "Pay to me the amount owing by you to me."

**(a) The Acceptance.**

The essential features of an acceptance are shown in the following form, which is in the orthodox form for a Bill payable one month after its date.

"One month after date pay to my order the sum  
of One hundred pounds for value received.

To Henry Jackson, White Street, Wellington.

(Signed) William Thompson."

The drawer of this Bill, Thompson, having made it payable to his own order must endorse it, and if he endorses it in blank by the mere addition of his signature to the back of it, it becomes thereby payable to bearer.

If the definition of Bill of Exchange on page 294 be referred to, each of the seven elements of the definition therein detailed can be traced into the above order. See paragraph (f) of the detailed requirements of the class of

Bill which is payable at a fixed future time. A study of that paragraph shows that two other forms of fixing the maturity or date of payment of the Bill could have been adopted:—It might have been made payable “on demand,” or it might have been made payable “one month after sight hereof.” If it had been made payable “one month after sight hereof,” it would be necessary, when presenting it to the drawee, Jackson, for acceptance, to require him to write on the face of the Bill a minute setting out the date when he sighted it, and when that minute of the date of sighting is added to the Bill it is thereby made payable at a future determinable time, namely, one month after that date.

**(b) Promissory Notes.**

A Promissory Note, as we have pointed out, differs from an Acceptance in that it originates with the party whom we have called the debtor. When the form of “Acceptance” is used, the creditor, William Thompson, addresses to his debtor, Henry Jackson, an order which says, “Please pay to my order the sum of one hundred pounds,” and Jackson is required to write his assent on that form of Bill when it is presented to him. When the Promissory Note form is used, however, the instrument originates with the debtor who says, “I promise to pay to William Thompson the sum of one hundred pounds.”

A Statutory definition of a Promissory Note appears in the Bills of Exchange Act as Section 84 in the following words:—

*Section 84:*

- (1) A Promissory Note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.

- (2) An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section unless and until it is endorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.
- (4) A note that is, or on the face of it purports to be, both made and payable in New Zealand is an inland note; any other note is a foreign note.

If the transaction used above to illustrate the form of Acceptance is adapted to the form of Promissory Note, the instrument would run thus:—

“One month after date I promise to pay to William Thompson or order the sum of One hundred pounds, value received.

(Signed) Henry Jackson.”

It will be noted by sub-section 2 of Section 84 that the maker (that is the signer, the party who makes the promise) may make the note payable to his own order. Thus “One month after date I promise to pay to my order the sum of ..... ” A note of this form is incomplete, for the maker has still to nominate by “order” the party who is to receive the payment—the party in whose favour the promise is made. This he would do by endorsing the Bill either in blank or specially. An endorsement in blank would be constituted by the mere addition of Jackson's signature on the back of the Bill and the effect would be to “order” that the amount of the note be payable to bearer. A special endorsement would nominate a payee and would be in the following form—

“Pay to the order of William Thompson.

(Signed) Henry Jackson.”

Until a Promissory Note payable to the maker's order is so endorsed, it is an incomplete instrument, and is not a Bill of Exchange.

Section 85 of the Bills of Exchange Act provides that a Promissory Note is incomplete, until delivery thereof to the payee or bearer. This feature is common to all forms of Bills of Exchange. A party may sign a Bill in a capacity that makes him liable on the Bill, and hold it in his hand whilst there is still being debated in his mind the question of whether or not he would put it into circulation by delivery to some other party. Until it is so delivered it is incomplete and does not and cannot operate as a Bill of Exchange.

#### **Joint Makers of Promissory Notes.**

Section 86 provides as follows:—

- (1) A promissory note may be made by two or more makers and they may be liable thereon jointly, or jointly and severally, according to its tenor.
- (2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

#### **Delay in Presentation of Promissory Note.**

Section 87 of the Bills of Exchange Act provides as follows:—

- (1) Where a note payable on demand is indorsed, it must be presented for payment within a reasonable time of the endorsement. If it is not so presented, the indorser is discharged.
- (2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.
- (3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purposes of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

This provision may be usefully contrasted with other provisions of the Act relating to overdue Bills. It is provided,

for instance, by Section 36 (2) that where an overdue Bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

That provision applies to acceptances and cheques, but there are qualifying provisions. Firstly, it is provided by sub-section 3 of Section 36 as follows—

A Bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

The effect is that when a Bill is overdue, and is, in that state negotiated, a person who takes it acquires no better title than that possessed by the person who negotiated it to him. This is so, even if he has no notice of any defects in that person's title; the mere fact that the Bill is overdue should put the intending transferee on enquiry; he takes the Bill at his peril.

In the case of cheques, alone, there is the special provision of Section 74 dealt with on page 296; it tends to relieve the drawer from liability where there is delay in presenting the cheque to the Bank, and loss is occasioned thereby.

Then we have the section now particularly under notice, namely, Section 87, in relation to Promissory Notes only. The distinction it makes in favour of Promissory Notes should be noted.

When an Acceptance has been out for an unreasonable time, or is otherwise overdue, it becomes a "non-negotiable" instrument, and a person taking it gets no better title than the party he takes it from, being affected adversely by defects of title, *even if he had no notice of them.*

In the case where a Promissory Note, however, has been outstanding for an unreasonable time, the transferee's position, in similar circumstances, is more favourable; he is

affected only by defects of title of which he has notice, *vide* Section (3).

There is a good reason for this distinction. In the case of the acceptance, the drawee may be prejudiced by delay in presenting for payment a demand Bill which, because it originated with his creditor, he probably has never seen, and which is almost certainly not in his books as a liability.

In the case of a Promissory Note, however, the instrument has originated with the maker, he has signed it, and ordinarily has entered it in his books as a liability.

#### **Place of Payment of a Promissory Note.**

Section 88 of the "Bills of Exchange Act" deals with this matter by the following provisions—

- (1) Where a Promissory Note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable; but in any other case presentment for payment is not necessary in order to render the maker liable.
- (2) Presentment for payment is necessary in order to render the indorser of a note liable.
- (3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

The provisions of this section are somewhat puzzling as they stand. They describe two ways in which the place of payment of a Promissory Note may be indicated on the note. These two ways may be described thus:—

- (a) In the body of the instrument, *e.g.*, "Three months after date I promise to pay to H. Jones or order at my office, No. 313, Queen Street, Auckland, the sum of, etc."; or

- (b) By way of memorandum (the usual method), *e.g.*, at the left-hand bottom corner of the note: "Payable at my office at No. 313, Queen Street, Auckland."

By way of explanation of these provisions we would point out that the effect of the section is that if the Promissory Note is made payable at a place named in the body of the instrument, then that is a part of the Bill itself, and presentment must be made there to render either the maker or an endorser liable.

If, however, the place of payment is stated merely by way of memorandum, then, in order to render an *Indorser* liable, it may be presented either at that *place* (whether to the maker or not) or to the maker elsewhere.

Presentment for payment is not necessary to make the maker liable, except where a place of payment is named in the body of the note.

The position might be stated thus—

- |   |   |
|---|---|
| (1) Place of payment in body of note      | { Maker's liability—requires presentment at that place.<br>Endorser's liability—requires presentment at that place.   |
| (2) Place of payment stated as memorandum |   |
|   | { Maker's liability — no presentation required.<br>Endorser's liability—requires         { (a) Presentment at that place, or<br>(b) Presentment to maker elsewhere. |

#### Adaptation of Act to Promissory Notes.

We have in the preceding pages pointed out that a Promissory Note is a form of Bill of Exchange with some peculiar features. It may be accepted as a general statement that the Bills of Exchange Act applies to Promissory Notes as it does to other forms of Bills of Exchange, but the statement needs to be modified. The modifications are set out in Section 90 of the Act as follows:—

- (1) Subject to the provisions in this Part of this Act, and except as provided by this section, the provisions of



this Act relating to Bills of Exchange apply, with the necessary modifications, to Promissory Notes.

- (2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a Bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted Bill payable to drawer's order.
- (3) The following provisions as to Bills do not apply to notes, namely, provisions relating to—
  - (a) Presentment for acceptance:
  - (b) Acceptance:
  - (c) Acceptance *supra* protest:
  - (d) Bills in a set.
- (4) Where a foreign note is dishonoured, protest thereof is unnecessary.

#### 7. "In Good Faith."

It is provided by Section 91 that a thing is deemed to be done in good faith within the meaning of the Bills of Exchange Act where it is in fact done honestly, whether it is done negligently or not. Thus, if reference is made to Section 29, sub-section (b), it will be seen that a holder in due course may be stated to be one who "took the Bill in good faith and for value." The provision we are now considering is to the effect that it is sufficient in such case if the party acts in good faith; and if any other party seek to attack his title the onus is on him to prove *mala fides* by direct evidence. He cannot ask to have it inferred from negligence. Bankers and other students of the Act, however, must not seek to carry these provisions too far. In some cases the Act provides for both good faith and due caution. Let us take, for example, Section 82, the section which provides a protection for collecting bankers. The wording there is "Where a banker in good faith and without negligence . . ." If in any given case a banker requires to invoke the protection of Section 82 he must be prepared to show not only that he acted in good faith, that is honestly, but also that he acted without

negligence. In other words, in this case, because the section expressly makes the existence of both qualities a necessary condition of the protection, there must be both honesty and due caution.

**8. General Provisions as to all Bills of Exchange.**

Bankers should note the following provisions, which are of general application. They comprise the last few sections of the Bills of Exchange Act.

**(a) Form of Signature.**

It is provided by Section 92 as follows:—

- (1) Where by this Act any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.
- (2) Where a corporation makes any instrument or writing required by this Act to be signed, it is sufficient if the instrument or writing is sealed with the corporate seal.
- (3) Nothing in this section shall be construed as requiring the Bill or Note of a corporation to be under seal.

It is submitted that sub-section (1) calls for no explanation, but by way of explanation of sub-section (2) it may be pointed out that a corporation is almost invariably required by law to have a seal. This seal is affixed to documents as a token of the company's execution and delivery of that document. The Articles of Association lay down the rules according to which the seal is to be used. Any person is entitled to see these Articles. The usual formula for affixing the seal is:—

“ The Common Seal of A.B.C., Limited, was hereto  
affixed this 10th day of June, 1934, in the presence of

Seal. \_\_\_\_\_

} Directors.

\_\_\_\_\_  
Secretary.”

This would be the appropriate wording where the Articles provided that the seal should be affixed in the presence of two directors and the secretary.

By this sub-section, this (or any other authorised use of the seal) is deemed to constitute a sufficient signature of the company to constitute the company a drawer, acceptor, maker or endorser of a Note or Bill.

Sub-section (2) must not be construed to mean that a company *must* act under its seal when a party to a Bill (see sub-section (3)). It is unusual to do so. Execution under seal is the most solemn and formal method of execution of a contract for a company, and is restricted in its use accordingly.

“ The Companies Act, 1933,” by Section 148, gives power to companies to execute bills and provides that this may be done—

(a) In the name of the company (*e.g.*, under its seal).

(b) By, or on behalf of or on account of the company.

A common form is:—

“ For and on behalf of A.B.C., Limited.

..... } Directors.”  
..... }

The main thing for a banker to give attention to in this connection is to assure himself that the method adopted is, as to its form and as to the persons purporting to exercise the power, in accordance with the company's Articles of Association.

#### (b) Calculation of Time Limits.

It is provided by Section 93 of the Act that—

Where by this Act the time limited for doing any act or thing is less than three days, in reckoning time non-business days are excluded. “ Non-business days,” for the purposes of this Act, means—

(a) Sunday:

(b) Good Friday, Christmas Day, and every other bank holiday under the “ Banking Act, 1908.”

Any other day is a business day.

Section 49 affords an illustration of an act the time limited for which is less than three days. If a Bill is dishonoured on Saturday, the strict wording of Section 49 (n) would require notice to reach the addressee on the following day, *i.e.*, Sunday. The operation of Section 93 is to extend the time by another day, *i.e.*, to Monday.

**(c) Noting and Protesting Bills.** (See page 246).

It is provided by Sections 94 and 95 as follows:—

Section 94: For the purposes of this Act, where a Bill or Note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the Bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter to take effect from the date of the noting.

Section 95 (1): Where a dishonoured Bill or Note is authorised or required to be protested, and the services of a Notary cannot be obtained at the place where the Bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the Bill, and the certificate shall in all respects operate as if it were a formal protest of the Bill.

(2) The form given in the Second Schedule hereto may be used with the necessary modifications, and if used shall be sufficient.

The form in the Schedule is worded thus:—

“ Know all men that I, A.B. (householder), of \_\_\_\_\_, in New Zealand, at the request of C.D., there being no Notary Public available, did on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_, demand payment (or acceptance) of the Bill of Exchange hereunder written, from E.F., to which demand he made answer (State answer, if any): Wherefore I now, in the presence of G.H. and J.K., do protest the said Bill of Exchange.

(Signed) A.B.

G.H. }  
J.K. } Witnesses."

(N.B.—The Bill itself should be annexed, or a copy of the Bill, and all that is written thereon should be under-written.)

**(d) Bills to which Maoris are Parties.**

Where a Maori is a party to a Bill of Exchange in the North Island of New Zealand, a special protection is conferred on him by the following provisions of Section 97:—

- (1) No Maori shall be held liable on a Bill or Note not written in the Maori language unless the same has a translation in that language indorsed thereon, and also shows upon its face that it was duly interpreted to such Maori at the time of the making of acceptance thereof, and that he understood the liability for payment imposed thereby.
- (2) This section does not apply to cheques.
- (3) This section shall have force only within the North Island of New Zealand.

It should be noted that the words "upon its face" mean showing "upon the face of the instrument" as distinguished from showing "by extraneous evidence." If the minute certifying to translation and interpretation appears on the back of the Bill, that will be a sufficient compliance with this provision.

**(e) The Rules of Common Law.**

Section 98 provides:—

- (1) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to Bills of Exchange, Promissory Notes, and Cheques.
- (2) Nothing in this Act shall affect—
  - (a) The provisions of "The Stamp Duties Act, 1908," or any law or enactment for the time being in force relating to the revenue:
  - (b) The provisions of "The Companies Act, 1908."

The writers have tried, from time to time in this work, to make it clear that it is erroneous and unsafe for any person to assume that the whole law relating to Bills, Cheques and Notes, is contained in the "Bills of Exchange Act, 1908." Bank officers are peculiarly prone to make this error; by constant handling of cheques and bills, and the consequent picking up of a rule of thumb conception of the law relating to them, they come to believe that they know all about them, and that this knowledge is the peculiar property of bankers. Many such men were, in 1903, almost indignant and quite scornful when the decision of the House of Lords in the famous *Gordon Case* fluttered the banking dovescotes and showed how incomplete and inadequate the growth of the law had been in relation to the growth of banking business.

Many of them felt, and said, that the House of Lords had intervened in a subject they did not understand as well as bankers. The real truth is, of course, that by the presentation of expert evidence, the law lords soon had at their finger ends all that bankers could disclose of their customs, their assumptions, and their attitude, and, in addition, they had a profound knowledge of the general law of property, (of which Bills of Exchange Law was only a part), and in particular the bearing of the doctrine of conversion. Their judgment was certainly a correct exposition of the law as it then stood, and revealed the necessity of the protective legislation that has since been passed.

Subsection (1) of the section we are now considering indicates the possibility that a rule of common law might at any time be found applicable, in a hitherto unthought of way, to some position arising out of a bill transaction. This subsection has more than once been invoked in our New Zealand Courts. The common law rules which govern dealings with chairs, horses, and motor cars, apply to cheques, except in so far as they are inconsistent with express provisions of this Act. If a thief steals my chair, and an auctioneer in good faith and without negligence assists the thief in converting the chair into money, and applying the money to his own use,

that auctioneer is liable to me and has no statutory protection. If a thief steals my uncrossed cheque, and a banker assists in the conversion of it by collecting it, the banker is equally liable to me, in an action for conversion.

If, however, the cheque was a crossed cheque, this rule of common law is inconsistent with the provisions of Section 82, if the banker can show that he acted in good faith and without negligence. In that case, the provisions of Section 82 would prevail.

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## CHAPTER X.

## THE BALANCE SHEET OF A BANK.

It will be generally agreed that very few business men possess the knowledge of the items comprising the Balance Sheets of the banks that is essential to their proper comprehension of the financial state of the community.

This is even more true of thousands of bank shareholders in this country. Their understanding of the statements of assets and liabilities submitted to them by the institutions in which they are so vitally interested, is, unfortunately, limited in the extreme.

This chapter therefore will attempt to give, to those who desire it, a clearer view of the structure and contents of the typical balance sheet issued by a bank.

We shall commence with the assets side of the balance sheet:—

**1. Assets.****(a) Coin.**

This item means now, and for the immediate future will continue to mean, silver and copper coins.

Until the institution of the Reserve Bank of New Zealand the bulk of the coin held by the trading banks in New Zealand was in the form of gold—the balance consisting of a sufficient supply of silver and copper coin to meet the current needs of the banks' customers. Supplies of silver and copper coin were obtained when required from the British mint.

The Australian Commonwealth mints its own silver and copper coin in Australia, and silver of the British mint is not in circulation there, except in a minor degree. Australian silver, though not legal tender in New Zealand, has to date tended to enter into circulation here, but is being withdrawn and replaced by New Zealand silver.

New Zealand, as a result of the depreciation of its currency, referred to more fully in the chapter dealing with



exchange rates, has now (1934), issued a silver coinage of its own.

The banks also hold sufficient silver and copper coin in London to meet the needs of their business there, but little or no gold is held.

**(b) Cash Balances and Deposits with Bankers.**

It is usual for trading banks to keep both current account balances and deposits at interest with other banks, especially in London, where balances are usually kept with the Bank of England or with one of the "Big Five." Current account balances are also kept by the trading banks in New Zealand with the Reserve Bank of New Zealand, while in Australia balances are kept with other banks, more particularly with the Commonwealth Bank of Australia which more or less occupies the position of a Central Bank, and is therefore tending to become the "bankers' bank."

**(c) Money at Call and Short Notice.**

As London is the world's greatest money market, it is not unnatural that we should find there a ready market for idle money. Consequently, bankers with funds for which they have no immediate use, find it possible to earn interest thereon by lending such funds at call, which means repayable on demand, or at short call which may mean at seven days' notice or such other notice as may be arranged. It is possible to lend money in London overnight and receive it next day and obtain one day's interest thereon at market rate. Funds lent by banks on short terms are usually in lump sums of £50,000 and upwards. So far as bankers are concerned, these short-term loans are made to discounting houses and brokers of undoubted financial standing, and are secured by deposit of first class cover, such as British Treasury Bills or Government securities, or bills of other financial concerns of high standing in the city. The rate received is governed by market conditions, not by Bank of England rates, and at times these transactions have

been a very profitable outlet for the idle funds of New Zealand banks whilst awaiting absorption by the seasonal demands of trade. Funds accumulate in London during the first six months of the year from proceeds of New Zealand exports, and are called upon during the second half of the year when it is necessary to meet heavy payments for shipments of Spring and Christmas goods ordered by New Zealand importers.

**(d) Government Notes, and Notes of Other Banks.**

These items hardly require explanation. They consist of the notes issued by Governments such as Great Britain, Australia, Samoa, and also by the Reserve Bank of New Zealand. A certain amount of these are on hand at all times in the New Zealand, Australian and overseas' branches of the various banks, and are all legal tender notes received in the ordinary course of business.

**(e) Balances Due by Other Banks.**

This item usually consists of amounts in the hands of various agent-bankers in other countries who collect for the New Zealand banks bills, etc., received from the latter's customers. Every bank establishes agency relations with other banks throughout the world for the purpose of facilitating export and import operations and for the service of letters of credit issued to travellers going abroad, and there are usually balances owing on both sides.

**(f) Bullion on Hand and in Transit.**

This asset consists of the gold bullion purchased by banks from Mining Companies and individual miners, and either held awaiting a sufficient accumulation to warrant making a shipment, or representing a shipment actually on its way to say, Melbourne, London, or America.

Gold bullion is a commodity and is sold in that market which offers the most advantageous results after taking into consideration cost of shipment and exchange rates. For

instance, Melbourne market was attractive when Australian-London exchange rates were 25% to 30%—as against New Zealand's 10%. America was a good market when England went off the gold standard. Gold is to-day the most readily marketable commodity in the world, and is apparently the one commodity since 1929 that has substantially increased in price. This is understandable, as the values of all other commodities being measured in gold, a world-wide fall in the prices of commodities must have the opposite effect on the price of gold as a commodity. A major gold discovery anywhere in the world would probably more quickly dissipate the present world-wide depression of 1930-1934 than any other influence that may be postulated.

**(g) Government Securities and Other Securities in London.**

Quite apart from balances with bankers in London, or money at short call, etc., banks operating in New Zealand and Australia keep large sums invested in British Government securities, the safest investment in the world. In some cases the whole or part of a Bank's Reserve Fund is so invested, but in addition to that it is considered advisable to have considerable funds in readily realisable securities in the world's greatest market at all times, to meet any unforeseen contingency that may arise. British Government securities, though returning very moderate rates of interest, are the ideal investment for the purpose in view.

The "other securities" in London cover other investments outside of British Government stocks, and may include stocks of other Governments such as India, Canada, or other Dominions, but probably not to any large extent. This item may also include New Zealand Government stocks—part of New Zealand's loans raised in London. It is not usual for the banks of Australia and New Zealand to invest in securities of foreign Governments, though it is quite permissible.

**(h) Australian and New Zealand Government Securities.**

Some of the banks show their investments in New Zealand Government and Australian Government securities as

separate items, which is desirable. These items are usually considerable, as Australasian banks are generally amongst the largest subscribers to loans issued by the Governments of Australia and New Zealand, and at times have taken the responsibility of underwriting part of such loans. Apart from the fact that such investments are of a readily marketable nature, though not always at par, it is essential for the financial credit of the country that every support be given to a loan raised to meet the needs of the Government. No section of the business community is more alive to the meaning of the phrase "financial credit of the country" than that section comprised in the term "bankers."

**(i) British Treasury Bills.**

These Treasury Bills are promissory notes each for £5,000 and upwards, with a currency of three months, issued by the British Government for the purpose of raising temporary funds to meet requirements in anticipation of revenue. Revenue such as income tax comes in during the last quarter of the financial year, and the issue of Treasury Bills covers Government needs during the earlier quarters. The bills are issued at intervals as funds are required, usually every week. Tenders are invited for them and the interest rate is fixed by the tenderers according to existing market conditions, rates being cut very fine. The rate for bills during 1934 reached as low as 5/-% per annum, and at the present time is less than 10/-%. These bills have a very ready market and are a useful outlet for the investment at market rates of temporarily idle funds.

**(j) Municipal and Other Local Bodies' Securities.**

As part of a bank's investments, it is not unusual to include some local body debentures, a form of investment hitherto looked upon as gilt-edged, readily saleable, and usually returning a somewhat higher rate of interest than Government securities. Some of the gilt has been taken off these investments by recent interest-reducing legislation,

and by other developments, indicating that the security of debenture holders, especially of the loans of smaller local bodies, is of a somewhat illusive, not to say elusive, nature. It is questionable whether local body debentures should continue to be included indiscriminately in the list of securities permissible as trustee investments. Further, there is no doubt that it is unfair to investors that all the debentures of a local body should rank "*pari passu*" with each other irrespective of the date of issue. An investor who, after carefully investigating the loan liability of a local body as compared with the value of property over which the body has rating powers, and who, being satisfied, duly invests his money in the debentures of that body, is surely placed in an unfair position by the fact that without his knowledge or consent the local body can continue to raise loans secured on the same security as, and ranking equally with, his debentures. To-day some New Zealand local bodies are unable to pay their interest owing to over-borrowing. The holders of earlier issues suffer equally with purchasers of the latest issue. If these securities are to claim high status there should be legislation to preserve the equities between the holders of different issues, and to limit the extent to which these securities may, in future, be legally authorised trustee investments. We think it will be found that local bodies in future will not find the same ready market for any new loans as they have hitherto found. This will apply especially to small local bodies. If, as a result, adjoining local bodies amalgamate for security purposes, and so reduce the number of these bodies in New Zealand, it will be to the ultimate benefit of all concerned.

**(k) Bills Receivable in London and in Transit.**

The London branches of the banks trading in New Zealand purchase most of the bills drawn by English and foreign exporters of goods to New Zealand. These bills are usually accompanied by shipping documents, invoices and marine policies, and constitute good security when

negotiated for sound concerns and drawn on New Zealand importing firms of good standing. The banks' London offices are kept well advised of the standing of New Zealand importers, and so are in a position to discriminate between those bills which it is safe to purchase and those which it would be as well to forward to New Zealand for collection only. They are also in a position to advise exporters regarding firms in New Zealand. When the London office has purchased a bill drawn on a New Zealand importer (or an importer of any other country) it becomes a "Bill Receivable," and those which have already been sent forward by mail are "Bills Receivable in Transit," and these bills are a first-class asset. A New Zealand importer would hesitate to dishonour a bill drawn on him by the merchants he imports from. Such act of dishonour is regarded very seriously in London and would materially affect his credit there. If, however, he should fail to accept the bill, the accompanying goods can generally be satisfactorily disposed of. Most of the manufacturers and exporting houses of any standing in England have an agent in New Zealand to whom the banks refer if necessary, and these agents usually attend to the disposal of the goods if the necessity arises.

As explained in the chapter dealing with exchange, the funds to purchase these bills in London are ordinarily provided by the proceeds of the bills purchased by the banks in New Zealand which are drawn against New Zealand's exports of wool, meat, dairy produce, etc., to London or elsewhere in Great Britain.

#### **(1) Remittances in Transit between Branches.**

Business firms or individuals having dealings with persons outside their own city or town frequently pay in to their accounts cheques and negotiable documents drawn on other places. These documents the bank collects on their behalf. On balance date there is always a considerable amount of these cheques, etc., which are in course of post to the point at which they are payable. As the customers' accounts have been credited with them, though they have

not yet been collected, it is necessary to show them as an asset under the above heading.

**(m) Bills Discounted.**

For those who have an uncertain idea of what is meant by discounting a bill, it may be explained that it is the process by which bills of exchange and promissory notes payable at a future date may be turned into ready cash.

Assuming that a banker is asked by a customer who holds such a bill or note to discount it, the transaction consists of calculating interest on the amount, at current overdraft rate, from the date it is discounted until the due date and then deducting such interest from the amount of the bill or note, the net amount being placed to credit of the customer.

Discounting of bills is in New Zealand practice chiefly confined to promissory notes given by retailers to their merchants. The merchant gives his retail customers three or four months in which to pay and takes promissory notes from them for their respective amounts. The merchant lodges these promissory notes with his banker for discount, and is duly credited with the amounts, less discount, which is really interest. The merchant, as endorser of the note, is liable to the bank if it is not paid by the retailer at maturity.

Needless to say the bank does not discount bills for financially weak customers, nor does it discount other than bills given by firms or individuals in a sound position. Before a bill is acceptable by a bank for discount it must have two good names to it—those of the maker, or acceptor, and of the endorser for whom it is discounted. It must also be a trade bill and not an “accommodation” bill, that is, it must be given to cover a trade dealing and not merely a loan transaction without consideration.

At one time the discounting of bills constituted a considerable portion of a bank's lending operations, but to-day it forms but a small part of the accommodation required by customers of bankers in New Zealand.



**(n) Advances and Debts Due to Bank.**

This is naturally the largest item on the assets side of a bank balance sheet, just as "Deposits" is the largest item on the liabilities side, for it is a bank's main function to accept money on deposit and lend it out again.

It should be needless to add that it is a bank's first duty to safeguard its depositors' interests by taking meticulous care that the money entrusted to it is lent safely. On the way in which that duty is fulfilled depends the bank's reputation and credit and very existence. And yet in days of stress when the values of all securities appear to be in the melting pot, and the banker in fulfilment of that trust declines to lend or to continue to lend in directions where definite risk of loss is entailed, much ill-informed abuse is levelled at his head. One would think when reading the opinions of some of our politicians, some of our newspaper men and the many cranks who fill the columns of the daily press with their "considered" opinions on finance, that the first duty of a bank in times of depression is to pour out its depositors' money to support every unfinancial customer who is in difficulties and to act generally as a beneficent grandmother or a universal charitable-aid institution.

If bankers are to retain the confidence of their depositors, on which confidence the whole banking structure indubitably rests, any undue pressure brought to bear on them in such times to lend their funds against their judgment must be firmly resisted, whether that pressure comes from customers or from politicians or public opinion.

So long as this is done the item "Advances" may be accepted as a good asset, especially as it is usual for a bank to make every provision for any bad or doubtful advance out of profits before arriving at the figures shown in the balance sheet.

**(o) Landed Property and Premises.**

Banks do not as a rule possess much landed property outside their premises at Head Office and branches, though



in addition to these some banks purchase residences for occupation by their managers. Apart from these holdings any landed property held by banks would usually be such property as may have fallen into their hands as mortgagees, where the relative debt having become hopelessly bad there has been no option but to enter into possession.

The question is frequently raised as to why banks invariably write down the value of their premises so that the balance sheet value is very much below the real value. Whilst bank premises usually occupy valuable sites, the type of building erected for banking purposes is not suitable for many other purposes, and should it become necessary to sell bank premises, they would not usually be a readily realisable proposition except at a severe discount so far as the building is concerned. For this reason and for the general reason that bankers always err on the side of conservatism in presenting their balance sheet figures, there is generally a considerable reserve behind the item "Property and Premises."

**(p) Liabilities of Customers for Acceptances under Credit per Contra.**

This is merely the "contra" entry to "London Office acceptances under credits" appearing as a liability. The banks accept responsibility in London for payment of certain acceptances on behalf of their New Zealand and Australian customers to whom they have issued Letters of Credit for purchase of goods, but as against this liability, the customer is responsible for recouping the bank at this end. Hence whilst the amount is a liability of the bank in London and is shown on the liability side of the balance sheet it is covered by the customer's liability to the Bank in New Zealand—which is shown as a corresponding asset on the asset side of the balance sheet.

**(q) Long-term Mortgage Department.**

In the case of the Bank of New Zealand there is an asset appearing under the above heading which represents the

amount outstanding and owing to the bank on table mortgage. This bank invoked in 1926 special legislation to create a Long-term Mortgage Department through which loans are made for fixed terms on the amortisation principle. It is a new departure in Colonial banking, the development of which will be watched with some interest. Unfortunately the difficult years following 1929 have restricted the operations of this new department owing to the vagaries of land values generally, and until some stability is reached in this direction long-term lending on land in New Zealand is an unattractive venture.

## 2. Liabilities.

### (a) Capital.

#### *Authorised and Subscribed Capital.*

With the exception of the Bank of Australasia which has an authorised capital of £6,000,000, of which only £4,500,000 has been issued, and the Bank of New Zealand, which may still issue £468,750 D Long-term Mortgage shares and £234,375 C Long-term Mortgage shares, the whole of the authorised capital of the banks operating in New Zealand is fully subscribed.

#### *Uncalled Capital.*

Only two of the banks have not called up their shares in full, namely, the National Bank of New Zealand Ltd., whose shares are £7/10/- shares called up to £2/10/- only, and the Union Bank of Australia Ltd., whose shares are £15 shares called up to £5 only.

#### *Reserve Liability.*

As a special protection to depositors the shares of the following banks are subject to a reserve liability (in addition to any uncalled capital) in the event of their going into liquidation:—

Bank of Australasia	£5	0	0	per share.
National Bank of N.Z. Ltd.	£7	10	0	„ „
Bank of New South Wales	£20	0	0	„ „
Union Bank of Australia Ltd.	£10	0	0	„ „

Needless to say the contingency in question is extremely remote, the strength of these banks being beyond question, and this reserve liability need not materially disturb the peace of mind of shareholders of the respective institutions.

Accepting, without question, the principle that the first duty of a bank is to protect its depositors and noteholders, the interesting analysis given below shows the total of paid-up capital, reserves and uncalled capital, or reserve liability in the case of each of the six banks trading in New Zealand, compared with the total note issue and deposits as at the dates mentioned:—

*Union Bank of Australia Ltd., 29th February, 1932.*

	£		£
Paid-up Capital	..... 4,000,000	Note Issue	..... 463,479
Reserves	..... 4,850,000	Deposits	..... 35,844,650
	<hr/> 8,850,000		<hr/> £36,308,129
Uncalled Capital	..... 8,000,000		
Reserve Liability	..... 8,000,000		
	<hr/> £24,850,000		
		=68% of Deposit and Note Liability.	

*Bank of Australasia, 12th October, 1931.*

	£		£
Paid-up Capital	..... 4,500,000	Note Issue	..... 333,079
Reserves	..... 4,475,000	Deposits	..... 37,678,572
	<hr/> 8,975,000		<hr/> £38,011,651
Reserve Liability	..... 4,500,000		
	<hr/> £13,475,000		
		=35% of Deposit and Note Liability.	

*Commercial Bank of Australia Ltd., 30th June, 1932.*

	£		£
Paid-up Capital	..... 4,117,350	Note Issue	..... 178,350
Reserves	..... 2,250,000	Deposits	..... 21,701,607
			<hr/> £21,879,957
	<hr/> £6,367,350		
		=29% of Deposit and Note Liability.	

*The Balance Sheet of a Bank.*

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*Bank of New South Wales, 30th September, 1932.*

	£		£
Paid-up Capital .....	8,780,000	Note Issue .....	564,772
Reserves .....	6,150,000	Deposits .....	83,943,595
	<hr/>		<hr/>
	14,930,000		£84,508,367
Reserve Liability .....	8,780,000		<hr/>
	<hr/>		
	£23,710,000	=28% of Deposit and Note Liability.	
	<hr/>		

*National Bank of New Zealand Ltd., 31st March, 1932.*

	£		£
Paid-up Capital .....	2,000,000	Note Issue .....	961,152
Reserves .....	2,000,000	Deposits .....	12,314,328
	<hr/>		<hr/>
	4,000,000		£13,275,480
Uncalled Capital .....	4,000,000		<hr/>
Reserve Liability .....	6,000,000		
	<hr/>		
	£14,000,000	=105% of Deposit and Note Liability.	
	<hr/>		

*Bank of New Zealand, 31st March, 1932.*

	£		£
Paid-up Capital .....	6,328,125	Note Issue .....	4,062,762
4% Stock .....	529,988	Deposits .....	31,565,843
Deb. Stock .....	607,050		<hr/>
Reserves .....	3,575,000		£35,628,605
	<hr/>		<hr/>
	£11,040,163	=31% of Deposit and Note Liability.	
	<hr/>		

It is to be noted that the interesting figures above given, include the total figures of each bank, not those for New Zealand only.

As already mentioned, four of the banks have a provision in their charters creating a reserve liability on their shares in the event of such bank going into liquidation, the effect of which is to materially add to the protection of their depositors. This is especially noticeable, for instance, in the case of the National Bank of New Zealand Ltd, where

the total of paid-up and uncalled capital and reserves, plus the reserve liability of shareholders together exceed this bank's liability to the public. The position of the depositors is also very strong in the case of the Union Bank of Australia Ltd. It is very clear from these figures that depositors in the six banks trading in New Zealand have little to fear so far as the safety of their deposits is concerned, especially as the liquid assets in each case form so large a proportion of the total assets. Before any loss could fall upon depositors, it would be necessary that the total assets in each case be depreciated to the extent of the above mentioned totals of capital, reserves, uncalled capital and reserve liability.

#### **(b) Notes in Circulation.**

Owing to the formation of the Reserve Bank of New Zealand which alone has the right of note issue, the item "notes in circulation," which has appeared for so long in the balance sheets of the banks trading in New Zealand, will in time disappear.

We consider it hardly necessary to state that "notes in circulation" refer to notes actually outstanding and in the hands of the public. Notes of their own bank hitherto held by bank tellers in readiness to pay out represent neither an asset nor a liability of the bank—they become a liability only after they have been issued to the public and until they come back to the bank again.

The note issues of the banks doing business in New Zealand were, as far as the public are concerned, "legal-tender," and have been so since August, 1914, but this State backing was withdrawn in January, 1935. Until the passing of the Reserve Bank of New Zealand Act, when the power of the trading banks to issue notes was determined, the banks had power to issue notes to the full extent of their holding of coin in New Zealand and of New Zealand, Australian and British Government securities. The gold backing alone of New Zealand's note issue was probably

the greatest in the world, for until 1932 the notes were practically fully covered by gold, and even at 30th June, 1933, the gold held was some £5,000,000 against a note issue of a little over £6,000,000. As gold in recent years has been worth considerably more than 50% above par value in sterling, the notes were more than fully covered. In view of the fact that the banks were holding in support of their note issue, all this gold coin in their vaults earning nothing, it will, we think, be admitted that the banks were heavily taxed in having to pay a note tax of  $4\frac{1}{2}\%$  as well as lose the interest on the idle gold. This is especially so when it is remembered that the gold is worth in sterling more than 50% above its face value and New Zealand currency is 25% less in value than sterling! As, in addition, the banks also bore the whole cost of their note issue, estimated to be about 1%, it will be seen that the privilege of being a note issuing bank in New Zealand was, in recent years, only a privilege in name.

Whilst dealing with "Notes in Circulation," we think we may here touch on a matter regarding which there appears to be a wide confusion in the minds of the public, and especially of that section of it which so repeatedly in the press, and elsewhere, reiterates that one of the chief causes of the present depression in New Zealand is shortage of currency. It seems to be suggested that since, say, 1928, there has been a concerted attempt by the banks to reduce the amount of currency circulating amongst the people! It may come therefore as somewhat of a surprise to these currency experts to learn that, in spite of business generally in New Zealand (as well as throughout the rest of the world) having fallen in volume by one-third to one-half, the actual figures of the note issues of the banks in New Zealand were £6,521,106 at 31st December, 1928, and £6,366,630 at 31st December, 1933. This, we think, clearly indicates that whatever may be asserted as being the cause of our troubles, it is not restriction of currency. It is rather shortage of that confidence which brings currency into circulation and

causes it to circulate rapidly. Most of the advocates for increasing the currency by artificial means confuse the question of *amount* of currency with *velocity* of circulation, and the latter can only be increased by the creation of confidence in the future stability of the world situation and of local conditions. Until such confidence is achieved, any attempt to increase arbitrarily the amount of currency in circulation will fail in its purpose. An influential deputation to the Minister of Finance in Auckland, in June, 1933, suggested that he should raise a loan to increase the circulation by £10,000,000 and "keep it there," which merely goes to show how far removed from realities are the ideas of many well-meaning people. It is well to remember that any given community requires *and can keep in circulation* only that amount of currency which equals the amount of currency exchange work to be done in that community. Any attempt to arbitrarily increase that currency can only result in depreciating the purchasing power of the whole, accompanied by a general destruction of confidence, to the ultimate distress of all classes of the community, those at the bottom of the economic ladder being the worst sufferers. It is also well to remember that a vast majority of the commercial dealings of the community are settled by cheques, and not by actual currency, and we know of no means of forcibly increasing the volume of business to be transacted by means of cheques. This can be achieved only by creating confidence, not by destroying it.

**(c) Deposits.**

This item in the balance sheet includes both current-account credit balances and interest-bearing deposits lodged for a fixed term. No interest is allowed in New Zealand on current-account credit balances, and a half-yearly charge is made for keeping current accounts. Fixed deposits must be for a term of not less than three months, nor more than twenty-four months, and may be fixed for any period within those limits. The rate of interest allowed

varies with the period of lodgment—the longer the period the higher the rate. On 2nd November, 1934, the rates were reduced to the following:—

For any period between 3 and 6 months .....	1½%
For any period between 6 and 12 months .....	1¾%
For any period between 12 and 24 months .....	2¼%
For 24 months .....	2½%

These rates are lower than those ruling in any previous years. The twenty-four months' rate has not previously been as low as 2½%, and from January, 1921, until June, 1932, it did not go below 4½%, and for part of that time it was 5%. We appear to be entering an era of cheap money, an indication of stagnation and want of confidence. It is an axiom that unless the banks can find a profitable and safe outlet for accumulating funds, they cannot afford to encourage deposits by offering high rates of interest.

It may be as well to touch here on a matter which is occasionally ventilated as a grievance in the New Zealand press—that the banks do not allow interest on current account credit balances “as in England.” These are the facts: In London no interest is allowed on current accounts, and no commission is charged thereon, provided a minimum balance of, say, £50 is kept, otherwise a charge of, say, 10s. 6d. would be made half-yearly. Surplus funds on current account may be placed to a deposit account on which interest is allowed at bankers' deposit rate. In certain cases, however, the current and deposit accounts are worked as one, interest being allowed over a certain sum. The fixing of this sum is a matter of arrangement, but generally speaking the balance on which no interest is allowed would be expected to yield to the bank a sufficient return to cover the equivalent of a commission charge on the turnover of the account.

In the counties, however, interest is allowed on credit balances at a very low rate, but against this a commission is charged on the debit turnover of the account. The interest allowed is determined by the average return the



bank earns on its funds during the six months, and is usually, say,  $1\frac{1}{2}\%$  to  $2\%$  below London bankers' deposit rate. If cheques on other places are paid in, interest for the days in transit is deducted. The commission charge varies in accordance with the account. The standard rate is  $\frac{1}{8}\%$  on the amount of the cheques drawn, but is less where the account is very active, but the charge is such as to give the bank sufficient remuneration for each account. As our authority says, "the banks (in England) are by no means philanthropists, and see that their customers pay for their banking facilities."

In view of this, we doubt whether the customers of New Zealand banks would prefer a change to the English system, though probably New Zealand bankers would find the change a profitable one.

**(d) Reserve Fund Account.**

The item "Reserve Fund Account" on the liabilities side of a balance sheet indicates the extent (i.e., the amount) to which moneys, otherwise distributable have been retained in the business.

It is not unusual for shareholders and other readers of a bank balance sheet to assume that the "Reserve Fund Account" is represented on the assets side of the balance sheet by specially selected investments of a gilt edged nature and ear-marked as reserve fund investments. This is not necessarily the case, as the bank may prefer to utilise the reserve fund in the ordinary course of its business rather than specially invest it. The matter is entirely within the discretion of the Board of Directors, and bank balance sheets do not usually disclose the course adopted.

**(e) Bills Payable and Other Liabilities (including Provision for Contingencies).**

The bills payable of a bank are those drafts on other places issued by its various branches which, at the date of the balance sheet, have not yet been presented for payment, and so are a direct outstanding liability.

Included, however, under the above heading, are various special reserve accounts, more particularly reserves against numerous overdrawn accounts which are inadequately secured and in connection with which some loss may eventually have to be faced. Every overdrawn account is most carefully considered periodically, and adequate provision made for any possible loss before arriving at the net profits for the half year. Furthermore, general provision is made for any special contingencies which may arise due to entirely unforeseen circumstances. The Hawke's Bay earthquake of 1931 was such a contingency. Hence, a considerable portion of the amount under this head may, as a rule, be considered as a further reserve beyond the amount specially shown under the head of "Reserve Fund."

**(f) Balances Due to Other Banks.**

This item is similar to "Balances due by other banks" appearing on the assets side of the balance sheet, and consists of various amounts held by the bank at credit of the accounts of their agents and not yet paid over. Every bank in New Zealand acts as agent for a wide number of overseas banking concerns and at any moment of time either owes to or is owed by those agents for balances not yet settled.

**(g) Reserve for Taxes.**

In those cases where a special reserve is set aside for taxes, the intention is that at least a year's taxes be held in reserve against the contingency that the bank may make no profits in any one year.

The method of taxing banks in New Zealand is peculiar, and whilst the banks have in good years accepted it with a good grace, in bad years it is deemed oppressive. The method adopted is to assume the bank makes  $1\frac{1}{2}\%$  net profit on the total of both assets and liabilities. The bank is then charged income tax at the highest rate on this assumed profit. For instance, if the bank's assets were

£50,000,000 and its liabilities approximately the same, it would be assumed to make a net profit of  $1\frac{1}{2}\%$  on £100,000,000, that is £1,500,000, and on this amount it would be charged tax at the highest rate. At 31st March, 1934, this rate was 5s. 10d. in the £, and the tax would amount to £437,500. This tax bears no relation to actual profits, and may even exceed net profits under economic conditions such as ruled in 1930/1934. Attempts by the banks to have this arbitrary basis removed have been unsuccessful, and until 1933 even actual losses by bad debts were not allowed to be deducted from these assumed profits. These deductions, however, may now be made as the result of legislation passed in the early session of Parliament in 1933. It will therefore be apparent that a "Reserve for Taxes" is a desirable item to have in a bank's balance sheet, especially when one considers that a bank could conceivably make no actual profit at all in any year and yet under the present system would have to pay taxation on the highest scale on a fictitious "assumed" profit!

To put the matter in another form the banks pay 8s. 9d. in tax for every £100 of their assets or liabilities in New Zealand, so that when a depositor lodges £100, and so creates in the banks' books both an asset and a liability, the cost to the banker of the privilege of holding such deposit is 17s. 6d. per annum!

**(h) London Acceptances under Credits.**

A reference to the remarks under the heading of "Liabilities of Customers for Acceptances under Credit" shown on the assets side of the balance sheet will explain this item.

**(i) Balance of Profit and Loss Account.**

This usually includes the balance carried forward from the previous year's balance sheet, plus the net profit for the year, but less any interim dividend which may have been paid for the first half of the year.

## CHAPTER XI.

### EXCHANGE RATES.

#### **(1) Commencement of recent Fluctuations.**

• Since September, 1929, up to the date of writing, August, 1934, the question of exchange rates, mainly the rate between New Zealand and London, has been very prominently before the public of this Dominion. It is improbable that prior to that date many importers or exporters had taken much interest in the matter, merely looking upon the mild fluctuations as being brought about by some mysterious financial cause known only to bankers, and quite beyond the understanding of the ordinary business man. To-day both business men and primary producers have cause to take a more lively interest in exchange rates and no doubt the controversy both in political and business circles, which has been given a wide publication through the press, has at least partially educated the people on a subject which previously was little understood.

#### **(2) Change in Controlling Authority and Basis.**

At the same time, and largely under the pressure of the same facts and developments, there has been a change in the controlling authority that determines the rate of exchange, and the very term "rate of exchange" has acquired a new significance. Hitherto, the phrase indicated the relative value from time to time of the currency of one country expressed in that of another country, announced by the central authority of the banks as their view of the necessities of the case, and based on the trade, visible and invisible, between the two countries. What is the basis of exchange rates in New Zealand to-day? It is an arbitrary rate fixed by the legislature as a matter of policy designed to give effect to

a considered plan for assisting the primary producers of the Dominion. No responsible citizen of the Dominion would underestimate the value of the primary producer to the country, nor his need of assistance, but he might doubt the wisdom of allowing the "rate of exchange" to become a weapon in the hands of the Government of the day. The whole question, however, is whether the exigencies of the position, as it appeared in January, 1933, justified the action of using a delicate piece of adjusting mechanism, hitherto used exclusively as a banking expedient, as a means of securing an export bonus rate to our primary producers.

### **(3) Basis before September, 1929.**

In order to have a clearer view of this question of exchange let us go back to the period preceding 1929 and examine the method by which New Zealand settled the balance of indebtedness as between it and other countries.

Without attempting to go into the intricate explanation so often given by writers on foreign exchange—how A in New Zealand ships wool to B in London and C in New York ships motor cars to D in New Zealand and how A's wool pays for D's motor cars—it is necessary to endeavour to make clear the method whereby the people of New Zealand pay for their imports without the necessity of shipping gold for the purpose.

When shipments of produce are made from New Zealand it is the usual custom for the company, firm or individual (who may be the farmer himself) making the shipment, in order to provide funds for the producer, to draw for the approximate value of the goods shipped a bill of exchange on the company or firm in London (or elsewhere) to whom the goods are consigned. This bill (or draft as it is sometimes called) is negotiated, which means purchased, by the shipper's bankers in New Zealand and sent by them to London and is there duly accepted and paid by the consignee of the goods from the proceeds thereof. It should be clear,

therefore, that at this point the Bank in New Zealand has paid out in New Zealand the approximate value of the produce, and has been recouped by receiving the amount in London. There are, of course, in actual practice, many adjustments made between shipper and consignee, as the amount drawn against the goods may be less or more than the goods realise, but at the moment we are dealing with main principles only. If this process, unaffected by other transactions with contrary tendencies, continued indefinitely the banks would deplete their resources in New Zealand and accumulate all their funds in London.

But now comes the reverse process, for there are always transactions with contrary tendencies. Importers of goods from Great Britain or foreign countries into New Zealand either remit funds from New Zealand, that is, pay the money to their bankers in New Zealand who pay it out in London to the shippers of the goods, or these London shippers draw bills on their New Zealand customers against the goods (just as New Zealand shippers do against their wool, etc.) and the London offices of the banks operating in New Zealand purchase these bills and are reimbursed by the New Zealand importers when the bills are paid in New Zealand. Thus the banks pay out in London for our imports and are recouped by receiving the amount in New Zealand—the reverse of the process described above in dealing with our exports.

If these two classes of transaction are clearly understood it should be equally clear that, providing the value of exports from New Zealand equalled the value of imports into New Zealand, there would be little need to adjust exchange rates because of trade balances. The aggregate transactions would, set out in the form of an account, settle themselves.

But that the values of exports and imports are far from equal is manifest from the following official figures of New Zealand's exports and imports for the years 1922 to 1933:—

Year.	Total Trade.	Imports.	Exports.	Excess of Exports over Imports.
	£	£	£	£
1922 .....	77,738,810	35,012,561	42,726,249	7,713,688
1923 .....	89,345,658	43,378,493	45,967,165	2,588,672
1924 .....	101,140,314	48,527,603	52,612,711	4,085,108
1925 .....	107,718,679	52,456,407	55,262,272	2,805,865
1926 .....	95,165,138	49,889,563	45,275,575	4,613,988*
1927 .....	93,279,300	44,782,946	48,496,354	3,713,408
1928 .....	101,074,747	44,886,266	56,188,481	11,302,215
1929 .....	104,377,040	48,797,977	55,579,063	6,781,086
1930 .....	89,685,000†	43,025,914	44,940,692	195,000†
1931 .....	61,760,000†	24,812,958	35,153,028	3,550,000†
1932 .....	60,000,832	23,035,102	36,965,780	13,930,678
1933 .....	62,031,597	21,026,678	41,005,919	19,979,241

\*Excess of imports over exports. †In terms of New Zealand currency.

Apart from trade figures, we have two large items to take into consideration affecting the incoming or outgoing of funds in London held there on New Zealand's account. Firstly, when the Government of New Zealand (or a local body) raises a loan in London the funds so raised increase the amount in the hands of New Zealand bankers in London in exactly the same way as does the selling of our produce in London. Secondly, the payment in London of the large amounts of interest due there on the loans raised by the Government of New Zealand and local bodies reduces those funds in precisely the same way as does paying out for goods imported into New Zealand. In other words, raising a loan in London creates an invisible export, and paying interest in London represents an invisible import.

Therefore, in arriving at the true balance of transactions between London and New Zealand, both visible and invisible dealings must be taken into consideration. There are other invisible imports and exports, such as tourists' and visitors' expenses both abroad and in New Zealand, and shipping freights, marine insurance, dividends and income from investments, legacies, etc., remitted to and from New Zealand—all of which affect the London funds held by the banks and consequently influence the exchange rates.



It may perhaps help to simplify this question of exchange if for the moment the reader mentally replaces the word "exchange" by, say, "money." When a New Zealand banker negotiates (purchases) an exporter's wool bill, he "buys London exchange" (money), and when he remits money to London for a New Zealand importer or purchases a bill in London drawn on a New Zealand importer he "sells London exchange," or, in other words, "sells London money."

A New Zealand banker thus buys and sells London money much as merchants buy and sell the goods they deal in. The price is governed according to supply and demand, or should be, and that price is called the "rate of exchange."

#### **(4) Inter-Bank Purchases.**

The banks in New Zealand not unnaturally find at times that their individual purchases or sales of exchange are unequal. It may be that some banks have more exporting customers than importing customers, and vice versa. If necessary the banks adjust these differences by buying or selling to each other such amounts of London exchange as may be mutually arranged.

A point always to be considered in these transactions is the willingness or otherwise of a bank to allow its London funds to increase, the question of the rates of interest obtainable in London for such funds being a very material factor. At times it has been very profitable to invest funds in London—more so than in New Zealand. At the date of writing (August, 1934) it is not, London money at short call being worth less than 1% per annum. The bank's surplus London funds are usually invested for short periods only, as New Zealand's requirements eventually absorb them.

#### **(5) Interest on Loans raised in London.**

Now if the reader will again refer to the figures above given, showing New Zealand's exports and imports, he will observe that our visible export surpluses have not in most



years provided for this Dominion's annual interest bill on loans of the Government and local bodies raised on the London market. These loans amount to £177,000,000, the annual interest charge being £8/9,000,000. The deficiency has been chiefly made up by further Government borrowing in London up to £5,000,000 a year for a number of years prior to 1930. Unquestionably the inability to continue these borrowings is one of the contributing causes to the internal depression affecting this country.

#### **(6) Sales of Exchange to Australia.**

We have referred above to interbank dealings in New Zealand in the direction of adjustment of local sales and purchases of exchange, but apart from these transactions, it has usually been possible to sell any surplus London exchange to Australia. The effect of selling in that country has been to increase the selling bank's funds in Australia, as settlement for such sales is made in Australia. That is, to say the selling bank received payment in Australia and paid out in London. Until recent years this suited New Zealand banks as New Zealand's balance of trade with Australia is against New Zealand and therefore funds were required in Australia. But at the present time (August, 1934) there is an accumulation of funds in Australia awaiting favourable conditions for transfer to New Zealand, and the sale of surplus London funds in Australia is not for the time being desirable from the New Zealand banker's point of view.

From the above general outline it should not be difficult to understand that prior to September, 1929, the rate of exchange on London was controlled by the balance of our exports over our imports, or vice versa, aided by our Government's borrowings in London, and that any surplus funds usually had a market in Australia. Nor was there any strict embargo on gold shipments to London, if the banks found it desirable to use this means of making adjustments.

**(7) Stability of Rates prior to September, 1929.**

Consequently the New Zealand-London exchange rates remained fairly stable. From February, 1922, when the telegraphic selling rate on London was 35/- premium, a high rate, the rate gradually came down to par in August, 1924, and reached 20/- discount by November, 1924. In other words, the banks were at that date allowing their customers 20/- on every £100 remitted to and paid out in London, an indication that London funds were over plentiful. But from November, 1924, to 4th September, 1929, there was a gradual rise to 25/- per cent. premium.

**(8) Relationship with Australia.**

At this point we must refer to the close relationship which exists with our neighbour, Australia, both in matters of finance and in our relations with the London money market. Of the six banks operating in New Zealand, four of them are Australian banks with their main business in Australia. The chief Life Insurance Companies operating in New Zealand are Australian institutions. The leading Stock and Station concern in New Zealand is an Australian company. The shares of a number of purely Australian banks and companies are included in the New Zealand Stock Exchange Official List, and, further, New Zealand's and Australia's general method of finance, especially the annual raising of Government loans on the London market, have a close resemblance to each other.

As a result of these close financial relations, it has been usual for New Zealand to follow Australia in the matter of exchange rates on London. Owing to the ease with which money could be transferred between Australia and New Zealand, the rate between the two countries seldom being more than 5/- per cent., it is obvious that if the rate for remitting money to London materially differed in Australia from that ruling in New Zealand, it would be a simple matter to remit money from one country to the other to take advantage of the more favourable rate on London.

For years before 1929 Australia had had an unfavourable trade balance with London and foreign markets, but owing to consistent annual borrowing in London by the Commonwealth and State Governments, the natural effect of these unfavourable balances on exchange rates had not become operative.

#### **(9) Australia's Shortage of London Funds.**

As a result, however, of Australia's sudden inability after 1929 to continue borrowing in London, an immediate shortage of London funds arose there and the demands for funds by Australian importers exceeded existing supplies held by Australian banks in London. Attempts to hold down rates had the effect of creating an exchange market outside the banks at higher rates, in other words, Australia's exporting concerns were in a position to sell their London surpluses at a higher price than the banks were prepared to give for them. This position forced the banks to increase the exchange rates to a point where they could control the position in the interests firstly, of the Commonwealth and State Governments so that funds would be available to pay interest on loans raised in London, and, secondly, to meet the needs of the banks' importing customers. It will be seen from the following figures how rapidly the rate rose:—

#### *Exchange Rates, Australia on London.*

				<i>Selling.</i>	<i>Buying.</i>
				£ s. d.	£ s. d.
22/7/29	.....	.....	.....	1 5 0 prem.	par
3/9/29	.....	.....	.....	1 10 0	5 0 prem.
10/10/29	.....	.....	.....	1 15 0	10 0
18/12/29	.....	.....	.....	1 12 6	17 6
28/1/30	.....	.....	.....	2 12 6	1 5 0
17/2/30	.....	.....	.....	3 2 6	1 15 0
10/3/30	.....	.....	.....	4 2 6	2 15 0
24/3/30	.....	.....	.....	6 10 0	5 7 6

#### *On Basis £100 in London.*

				<i>Selling.</i>	<i>Buying.</i>
				£ s. d.	£ s. d.
9/10/30	.....	.....	.....	109 0 0	107 17 6
5/1/31	.....	.....	.....	115 10 0	114 7 6

	£	s.	d.	£	s.	d.
13/1/31 .....	118	7	6	117	7	6
17/1/31 .....	125	10	0	124	7	6
29/1/31 .....	130	10	0	129	7	6
3/12/31 .....	125	10	0	124	7	6

(10) New Zealand's Easier Position.

The position of the banks in New Zealand with regard to London funds was much easier than that of the banks in Australia, as our exports usually exceeded our imports. In view of the increased cost to importers and to the New Zealand Government of higher exchange rates, the New Zealand banks were loath to continue to increase the rate on London to that ruling in Australia. It consequently became necessary, if New Zealand were to have a lower rate than Australia, to prevent Australian funds being remitted to London through New Zealand to take advantage of New Zealand's lower rate, and the only way to prevent this was to increase the rate between New Zealand and Australia and so erect a barrier. The rates moved as follows:—

*New Zealand on Australia.*

	<i>Buying.</i>	<i>Selling.</i>
1929 .....	5/-% dis.	5/-% prem.
19/1/30 .....	30/-% dis.	10/-% ..
3/4/30 .....	37/6% ..	5/-% ..
1/11/30 .....	87/6% ..	5/-% ..

*On Basis £100 in New Zealand.*

	<i>Buying.</i>	<i>Selling.</i>
	£ s. d.	£ s. d.
12/1/31 .....	110 0 0	109 10 0
28/1/31 .....	114 2 6	113 12 6
29/1/31 .....	118 12 6	118 2 6
4/6/31 .....	119 7 6	118 12 6
3/12/31 .....	114 7 6	113 12 6
20/1/33 .....	100 10 0	99 15 0
13/2/33 .....	100 10 0	100 0 0

Had this step not been taken, funds in London belonging to New Zealand would rapidly have been depleted to meet the needs of Australian importers. Whilst the New Zealand

rate on London was eventually increased to 10% on 20th January, 1931, the Australian rate went up to £30/10/- on 29th January, 1931, being reduced to £25/10/- on 3rd December, 1931. Rates between New Zealand and Australia were increased to cover the difference.

**(11) "Exchange Pool" Arrangements, 1931/1932.**

We are not concerned here with the arrangements made between the Australian Government and the banks there, under which the Australian Governments had first call on the London funds of the banks to meet the Governments' interest requirements, except that the New Zealand Government followed along the same lines at a later date.

Towards the end of 1931, owing to the continued fall in the price of our exports, and to the fact that the New Zealand Government did not anticipate being able to borrow on the London market for some time to come, it became necessary to make sure that funds would be available in London to meet the needs of the New Zealand Government and local bodies for interest payable on their loans. As imports were not falling rapidly enough there was a doubt, in view of there being exchange operators outside of the banks as to whether funds available to the banks would be sufficient for the requirements of the Government, local bodies and the importers. To meet the situation the Government by arrangement with the banks was given first call on the proceeds of New Zealand exports sold in London, provided the Government on its part would ensure that all the proceeds of New Zealand overseas exports would come into the London branches of the banks trading in New Zealand. This the Government achieved by a Proclamation creating what was called the Exchange Pool, under which exporters were required to send all shipping documents through a bank, which was to see that the relative proceeds were duly received by it in London. This move by the Government to ensure its needs being provided for in London raised a storm of criticism from primary producers and

exporting concerns, who considered it was a means of keeping down the London exchange rate which, in compliance with the laws of supply and demand, would have otherwise automatically risen in their favour. It is extremely doubtful whether this would have been the case unless, as in Australia, interests outside the banks had created a speculative exchange market and forced up the price against the banks and so against the Government and importers. How far such a movement would have been successful is hypothetical. At no time was the exchange position of New Zealand, based on our relative exports and imports, at such a point that a rate higher than 10% was really warranted. However, the position was eased in May, 1932, owing to the New Zealand Government arranging a loan of £5,000,000 which enabled the Exchange Pool arrangements to be cancelled by the end of June, 1932.

#### **(12) Primary Producers agitate for Higher Exchange Rate.**

During 1931 and 1932 there was constant agitation by primary producing interests to have the exchange rate increased to at least the Australian rate, not because New Zealand was short of London funds as in Australia's case but because the effect would be to assist the primary producers. Great pressure was brought to bear on the Government with the object of forcing the banks to take action in this direction. The banks resisted on the grounds that the exchange position did not warrant an increase in rate, in fact they considered that the rate should be reduced, not increased. The position was extremely disturbing to commercial interests, persistent rumours of a probable sudden increase in the rate resulting in every effort being made to remit money to London or to import goods in anticipation of such increase, only to find that the rate did not increase. This resulted in the money remitted lying idle in London, sometimes for months, while interest, in many instances, was being paid for it in New Zealand. The agitation for an increased rate appeared to have reached

a climax in November, 1932, when the Prime Minister definitely announced that the Government would not interfere as the arranging of exchange rates was the concern of the banks. With this pronouncement importing interests were satisfied, and though further agitation for an increase in rate was still being made by farming interests, it was considered that the matter was finally settled.

### **(13) They are Successful.**

On the 20th January, 1933, however, importers and readers generally learned from their morning newspapers that the rate of exchange on London had been increased to 25 per cent. The rate of increase was officially announced by the Government and a statement by the banks was published to the effect that they had, after discussion, agreed to increase the rate at the request of the Government, and, in consideration of the Government having undertaken to enact a Bank Indemnity Bill, indemnifying the banks from any possible losses arising from the increase of the rate. A further sensation was provided by the fact that the Minister of Finance, Mr. Downie Stewart, was not in agreement with this policy and had resigned.

### **(14) Differences of Opinion.**

There were sharp differences of opinion between our legislators and our bankers. Each thought, planned and acted under the pressure of unprecedented events, and under the burden of a tremendous responsibility. We give credit to all concerned for an earnest desire to further, each in his own province of duty, the best interests of the Dominion. In these circumstances, we propose to set out as fairly as possible the views of both sides, and leave the events to the judgment of history.

### **(15) Government's Point of View.**

The Government point of view may be stated thus:—

- (1) That it was essential that the primary producers of the Dominion be assisted as, owing to the fall in



the world prices of our chief exports, farmers could not produce at a profit, and would, consequently, cease producing.

- (2) That an increase in the rate of exchange would increase the income of primary producers.
- (3) That, even if the result of the higher rate was a redistribution of the national income for the benefit of the primary producers and to the detriment of the rest of the community, this was desirable as the country's well-being depended on the prosperity of primary production.
- (4) That the higher exchange rate would stimulate production and exports.
- (5) That the increased spending power of the primary producers would improve internal trade, and the importers would receive compensating benefit therefrom.
- (6) That the increased cost to the State would be balanced by increased income tax from farmers and others benefiting by the higher rate.
- (7) That the fears of the bankers as to the probable accumulation of funds in London were unfounded.
- (8) That depreciating the currency was not a breach of the Ottawa Agreement.
- (9) That New Zealand must follow Australia, otherwise Australian exporters were in a more favourable position than New Zealand farmers.

**(16) Bankers' Point of View.**

The banks' point of view may be stated thus:—

- (1) That the question of "rate of exchange" was solely one for bankers, who alone were in the position to know the state of the London funds available to New Zealand, and these funds controlled the rate.
- (2) The basis of the exchange rate should be the balance of trade, visible and invisible.



- (3) That on this basis the rate should be reduced, not increased.
- (4) That the effect of increasing the rate would be to encourage exports and discourage imports, and so result in accumulating large surplus funds in London for which there would be no demand and on which there would ultimately be a heavy loss.
- (5) That there would be heavy increased cost to the Government and local bodies in remitting interest to London on loans raised abroad.
- (6) That there would be considerable loss in customs duties.
- (7) That the increase, if any, in income tax from farmers would be more than offset by loss of income tax from importers.
- (8) That the spending power of the people in the aggregate would not be increased in any way.
- (9) That in depreciating our currency we were putting up a barrier of 25% against British goods, which was not in keeping with the spirit of the Ottawa Agreement of 1932.
- (10) That the needs of the farmers would be better met by a bonus on exports, and that the banks would assist the Government towards this end.
- (11) That New Zealand exporters would lose some of the goodwill of the English importer.
- (12) That Australian imports would, to some extent, replace British imports owing to the more favourable exchange rate.

#### **(17) New Zealand Silver Currency.**

In view of the fact that the silver currency of New Zealand was imperial coinage of the British mint, it followed that the depreciation of the New Zealand pound gave the silver currency, provided it could be exported to Australia or Great Britain, a value 25% above its New Zealand value. Consequently, large quantities were exported, in spite of the

fact that such export was prohibited by the New Zealand Government, and in spite of the vigilance of the police who searched all outgoing vessels and passengers' luggage—with occasional success.

To meet this difficulty, legislative authority was obtained for the issue of a distinct New Zealand silver currency, and this is now the currency of the Dominion. It is expected that a proclamation will be issued in the near future under which Imperial silver coins will cease to be legal tender in New Zealand, and many people of perhaps the older generation will feel regret that our exchange policy should have had, as a result, this further breaking away from our close association with the Mother Country.

#### **(18) Accumulation of London Funds.**

At 31st March, 1934, the figures published by the Government indicated that the New Zealand Government, as a result of their exchange policy, had accumulated over £20,000,000 of surplus funds in London. One of the first acts of the Reserve Bank of New Zealand when it commenced operation on 1st August, 1934, was to take over these funds from the Government. Under the Reserve Bank Act, the Bank controls exchange rates and it has decided to continue the rate at 25%. The Bank must buy or sell at the rate quoted by it—in sums of £1,000 and upwards.

It is possible that now the rate is probably settled at 25%, imports will eventually resume their original volume and, together with the funds accumulated in New Zealand awaiting transfer, will absorb further surpluses, and in a brief while matters will right themselves. There are, however, contrary possibilities that must not be overlooked. The tendency to create industries under the protection of the exchange rate, and to import from Australia to a greater extent than hitherto, will probably grow, to the detriment of our imports from Britain. Should the market value of our exports increase, the difficulties of the position will

become accentuated. We doubt whether the funds held in New Zealand will to any extent be moved to London or New York so long as the rate remains at 25%, especially as money in London or New York is earning less than 1% per annum. Importers have also learnt the economy of carrying lower stocks and importing closer to their immediate requirements, and are likely to profit by it by limiting their imports to a minimum. It remains to be seen whether it is economically possible to continue indefinitely an exchange rate of 25% between New Zealand and London. There is always the possibility of an ever increasing accumulation of funds in London, which, if the trading banks are unwilling to hold, must be taken over by the Reserve Bank.

#### **(19) Exchange Benefits to Producers.**

As against these views must be set the benefits to the primary producers of this country, who are the chief beneficiaries of the present exchange policy. It is admitted that sheepfarmers until the 1933/34 season were in need of assistance, and dairy farmers throughout the slump period have been finding it difficult to meet their outgoings. The difficulties of many farmers have been due to high priced land, and the relative mortgages thereon. The mortgagees, of which Government lending departments and banks constitute a large proportion, have benefited by the assistance the exchange rate has given to farmers. New Zealand being chiefly a primary producing country, it is essential that the farming industry be kept going, though all farmers do not require the present assistance in an equal degree and some, in fact, do not require it at all.

#### **(20) Future Developments.**

It will be interesting to watch the development of the exchange policy of New Zealand. Should our surplus from exports for the season 1934/5 be equal to that of 1933/34, there will be further accumulation of London funds to the extent of, say, £15,000,000, which will either be held by the

trading banks, or transferred by them to the Reserve Bank. Probably the trading banks will prefer to retain them, as London money can earn at the present time about 1%, while the result of selling the surplus London exchange to the Reserve Bank would be merely to increase the deposits of the trading banks with the Reserve Bank in New Zealand on which they receive no interest, and on which they have to pay 8s. 9d. per £100 in "income tax" to the New Zealand Government.

But if imports, plus interest on New Zealand's London loans, do not shortly approximate the total proceeds of our exports, the question may well be asked: "How long can the present artificial rate continue?"

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## CHAPTER XII.

## THE RESERVE BANK OF NEW ZEALAND.

## 1. Its Constitution.

**(a) The Incorporating Act.**

The "Reserve Bank of New Zealand Act, 1933" was passed in November, 1933. Its preamble describes it as an Act to provide for the establishment in New Zealand of a Bank to be called The Reserve Bank of New Zealand, to define its powers, functions and duties, and to make such consequential amendments of the Law relating to Banking as may be necessary or advisable in view of the establishment of the Reserve Bank.

**(b) Born in a Crisis.**

The Reserve Bank of New Zealand was inaugurated during a period the circumstances of which caused a great deal of attention to be focussed on its constitution, functions and prospects. The Dominion was in the throes of the worst economic and financial crisis it had ever known; a crisis which was world-wide in its incidence and effects. The result was that there was centred on the proposal a degree of attention and interest which, measured both by its depth and breadth was much greater than it would have been otherwise. It would, unfortunately, seem to be a fact that much of this interest was stimulated by the popular hope that the Reserve Bank would be capable of being made a means of finding and operating an easy way out of the difficulties and hardships of the period. To the man in the street, and his much harassed house-wife, the crisis in New Zealand expressed itself as a shortage of money, and the theory and belief that it was rooted in monetary problems and that the remedies lay in monetary reform were zealously preached throughout the Dominion. Once this fallacy was

accepted, it seemed reasonable to hope that an institution that was to take over the right of issuing paper money and control the currency and monetary problems of the country in the interests of the people as a whole, would quickly end the distressing shortage of money and restore prosperity to the Dominion. This hope, expressed and unexpressed, must unfortunately share the fate of its predecessors which were born of anticipations of the results of the Ottawa Conference of 1932, and the London Economic Conference of 1933, each pre-viewed through humanity's age-old expectation of and belief in the magic way of escape from difficulties.

Apart from these unreasonable hopes, it is beyond doubt that a period of financial stringency is not a good time for the inauguration of a Reserve Bank or any other kind of Bank. The Prime Minister of Australia, when introducing the Commonwealth Bank Bill of 1911, was undoubtedly correct when he said, "this is the time to legislate—a time of prosperity and financial calm." The Reserve Bank of New Zealand wisely directed, may be expected to do much to reduce to a more even grade, the graph-plotted course of our economic and financial history, and it should, from its commencement, make its influence for stability felt. It is certain, however, that it can operate most effectively, when, in periods of prosperity and financial calm it can inaugurate and develop a policy that will give it reserves and prestige, enabling it to some extent to "even up" in periods of economic inactivity and financial stringency. All "evening up" policies must be based on accessibility of hillocks and high patches to make up the deficiencies of the furrows and low places.

### **(c) The Genesis of the Reserve Bank.**

The proposal to establish a Central Bank or Reserve Bank in New Zealand is of recent origin. It is linked up with the movement which launched the Commonwealth Bank of Australia in 1911, the various legislative steps which

have tended to make that institution a Central Bank for Australia, and the looming financial crisis which brought two highly placed officials of the Bank of England (Sir Ernest Harvey in 1927 and Sir Otto Niemeyer in 1930) to Australia to advise the Commonwealth Government. The exact link with New Zealand is the second of these visits, that of Sir Otto Niemeyer to Australia in 1930, a visit which arose out of discussions between the Government of the Commonwealth, through the Commonwealth Bank, and the Directors of the Bank of England, on the matter of Australia's oversea obligations. In July of 1930 the Government of New Zealand asked Sir Otto Niemeyer (who was then in Australia) to visit New Zealand, and examine and report on its banking and currency system, having regard to the position in which that system had emerged from the period of war. Sir Otto accepted the invitation and the task, and made a report in which he advocated the formation of a Central Bank. This report is a statesman-like document, and it will stand permanently as the foundation stone of the Reserve Bank system in New Zealand.

When the constitution and functions of the Reserve Bank of New Zealand are studied in the incorporating Act there can be recognised the influence of the experiences of the Commonwealth Bank of Australia, with the history of over twenty years of legislative modifications that have constantly tended to lessen its development as a competing trading bank and tended to make it a Central Bank. These can be traced into the Niemeyer report, and from there into the Reserve Bank of New Zealand Act of 1933.

#### **(d) The Principal Features of the Reserve Bank of New Zealand.**

The Reserve Bank of New Zealand differs structurally and functionally from its forerunner the Commonwealth Bank of Australia. The latter has no share capital; it conducts ordinary commercial and trading banking business in competition, with the privately-owned banking

corporations. When it was started, it was not a bank of issue; there was, instead, a State note issue controlled by the Commonwealth Treasury. It was not till 1920 that the right of note issue was given, and not till four years later that control of the note issue and control of the Bank's other functions were unified in the Commonwealth Bank. It was not till 1924 that an Amending Act gave to the Commonwealth Bank the function of acting as the compulsory clearing house for cheques and bills, and compelled the private banks to keep reserves with the Commonwealth Bank for settlement of their internal exchanges. On the other hand the Reserve Bank of New Zealand has a share capital; it started as a bank of issue, with its issue department and its banking department unified under the control of its Board of Directors. Its duties as originally defined by Section 13 of the incorporating Act require it to organise a clearing-house system. It is true that the statement of its particular powers is made in terms wide enough to enable it to undertake any ordinary banking business and to compete with the private trading banks, but it is, by name and by all its distinguishing features and functions, a Reserve Bank or Central Bank. It cannot be contemplated that it will embark on ordinary competitive banking business, unless at any time, its directors in the exercise of its functions as a Reserve Bank deem it necessary to do so in the fulfilment of the essence of its purpose as set out in Section 12; viz.: "to exercise control, within the limits of the powers conferred on it by this Act, over monetary circulation and credit in New Zealand, *to the end that the economic welfare of the Dominion may be promoted and maintained.*" To illustrate this point, attention may be directed to Sub-section (2) of Section 13: "The Bank shall at all times make public the minimum rate at which it is prepared to discount or re-discount bills." That is a function of a Central Bank. If it seemed to the Directors that the promotion of the economic welfare of the Dominion required, at a given time



and in given circumstances, for instance, a discount rate of 5% for first-class trade bills, and the trading banks, after the publication of the rate of 5% continued to charge say, 6%—the next move of the Reserve Bank is obvious, and its result a foregone conclusion. The Reserve Bank would, in those circumstances, itself discount bills for traders, not as a trading bank embarking on competitive dealings as a fixed policy, but as a Reserve Bank making its published rate effective.

The legislative promoters of the Bank thus made three important decisions in relation to the institution. Firstly it was to be constituted with a share capital and a register of shareholders. Secondly, it was to be a Reserve Bank and not another competing trading bank. Thirdly, it was to be a note-issuing Bank with its issuing department and its banking department under one control. The power and right of note-issuing vested in the Bank raises at once another problem, viz., what shall be the basis or security of the note issue; into what medium shall the notes be convertible, internally and externally. This problem was faced by the promoters of the Reserve Bank and the solution comprised in the statute is that the notes of the Reserve Bank shall be internally inconvertible, and shall be externally convertible, into what is now well known as "sterling exchange," in London, or "net gold exchange" in countries, the currency of which, by law and in fact, is convertible on demand at a fixed price into exportable gold. This latter term (net gold exchange) is defined by Section 17 (2) (c) of the Reserve Bank of New Zealand Act. As the great bulk of our international settlements may be expected to be in the future, as in the past, effected in London, this means that in the future, as at the time of writing (March, 1934), the New Zealand One pound note is convertible into a British One pound note, either at par, or less a discount or plus a premium, according to the declared exchange rate in force at the time between Wellington and London. Ignoring for the time being the arbitrary rate in operation at

present, this means that transactions that tend to build up New Zealand funds in London will be encouraged by a premium and contrary transactions that tend to deplete New Zealand funds in London will be discouraged by a discount when the balance of trade (including therein interest and all invisible imports) requires more New Zealand funds in London, and vice-versa. Subject to this regulative adjustment the New Zealand note will be convertible into the British note of equal denomination.

Internally the notes of the Bank are inconvertible. It is provided by Section 20 of the Act that the tender of a note of the Bank expressed to be payable on demand shall be a legal tender for the amount expressed in such note, at all times as long as the Bank continues to pay its notes by giving in exchange, on presentation of stipulated parcels, sterling for immediate delivery in London. The Act makes provision for a prescribed ratio of liquid securities to be held by the Bank as a reserve to cover its note issue and other demand liabilities.

The provision of a "sterling exchange" basis for our note currency is the adoption of the unequivocal recommendation of Sir Otto Niemeyer in his report of February, 1931.

#### **(e) The Functions of a Reserve Bank.**

It will be advantageous now to set out a brief statement of the recognised functions of a Central Reserve Bank.

Firstly, in general terms it might be said that a Reserve Bank is—

- (a) A Banker's bank, and clearing-house.
  - (b) An instrument for influencing and controlling as far as possible economic and credit transactions and tendencies with their related monetary facilities in the interests of the community, free from the disturbing influences of any extraneous motives, such as the desire or necessity of earning profit in the process.
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Secondly, setting out the matter in more detail, the following functions might be tabulated:—

- (a) A Reserve Bank should have control of the currency system, and particularly of the note issue.
- (b) It must be the banker of the trading banks, and as such it should hold, as their deposits, their Reserve balances.
- (c) It should act as a clearing-house for the trading banks. Settlement of their credit clearings and dealings with each other must be made through their accounts with the Reserve Bank.
- (d) It should control the clearing system of international settlement, and for this purpose should announce, and publish from time to time the exchange rate at which such settlements will be effected.
- (e) It should endeavour so to exercise its internal functions as to meet, and if possible counteract or control, disturbances and tendencies that are apt to express themselves in periods of boom and slump, inflation and deflation, expanding and contracting trade.
- (f) It should act as the Banker of the State, being entrusted with the conduct of all the Government's banking business.

To quote from Sir Otto Niemeyer's report, it should seek "by timely action to minimise disturbances in every direction which are liable to arise out of an unregulated or imperfectly regulated market."

Negatively it may be stated that:—

1. In the basis of its control, and in its policy, a Reserve Bank must be clear of current political influence and direction; and we would in this connection quote with approval the dictum of Sir Otto Niemeyer that "the Bank must be entirely

free from both the actual effect and the fear of political interference."

2. It should not compete, ordinarily, with the trading banks which are its customers.

This dictum is written not in the interests of the trading banks so much as in the interests of the community, for the evil to be guarded against is not the cutting down of the profits of the trading banks, but the being led into transactions and positions which will make the Reserve Bank patient as well as physician when the periods of weakness and crisis arise.

When we seek to set out and exemplify the functions of a Reserve Bank in New Zealand, it is perhaps inevitable that we should do so by drawing a contrast with the ordinary functions of the trading banks in the Dominion. Furthermore, as we have had, so far, a banking system which has functioned and met all our internal and external requirements, it is obvious that the trading banks which have operated that system must have exercised some at least of the functions of a Reserve Bank. The measure to which this is so will be made clear by the extent to which the Reserve Bank of New Zealand will take over functions and duties from the trading banks.

When, however, we look to the history and operations of the trading banks in New Zealand, for the purpose of drawing comparisons between the way they have exercised Reserve Bank functions, and the manner in which a purely Reserve Bank may be expected to exercise them in the future, we are conscious of a difficulty. We cannot point to evils and abuses which are now happily to be remedied and ended. The fact of the matter is that as custodians of our note issue, and as trustees of our credit resources, and directors of our credit policy, and as the State's bankers, the Associated Banks have performed their duties so well, and with so high and well-informed a sense of responsibility to the community, that most of the point is

taken out of a statement of the advantages of and justification for the inauguration of a Reserve Bank.

Many people in our midst profess to believe that the banks were able to create credit; even, as some writers in the press have put it, to create money at their own pleasure. Better informed people know that the legal limits of note issue which, since the beginning of this century, have been stated and altered, re-stated, and modified from time to time, have never been approached, much less exceeded by the banks. This does not mean that the banks have arbitrarily withheld credit. No possessor of a credit balance has ever been refused legal currency in satisfaction of his demands for money to the extent of his recorded credit. If loans have been refused, the refusal has not been arbitrary, or for a reason profitable to the bank but detrimental to the community. It has been a refusal for reasons that seemed sound to men who acted under a sense of trained responsibility. The soundness of their conservatism can be gauged by the concurrent conservatism of creditor-customers in the investment of their own money. The limitation of spending which has characterised the lean years 1930 to 1934 has been accompanied by a gradual accretion of available credits, recorded as liabilities to banks' customers in the books of the banks; and the lack of enterprise in spending has been due to the unwillingness of the possessors of that credit to embark it in trade or industries. They would explain that unwillingness by their inability to find ventures that inspired them with sufficient confidence to justify their adoption and undertaking. .

In the matter of the general financial policy which the banks have formulated and mutually accepted as sound in view of the Dominion's position from time to time, it is submitted as a statement, correct in general terms and application, that no body of independent responsible citizens, charged and entrusted with a duty of exercising a discretion and fixing that policy in the past, would or could have acted very differently from the associated banks. The position

in the past has admittedly been open to the theoretical objection that this policy, fraught with all the possibilities of safety and danger, success and frustration to the Dominion as a whole, has been in the hands of privately-owned institutions, whose primary duty is to make profits for their proprietors. It has been urged, as an objection, that the decision to encourage, say building policy, at one period, and to discourage it at other periods; to restrict imports by withholding credit at times, and to encourage them by the converse policy at other times, should not be in private hands. This theoretical objection must be admitted, but the history of the last three decades seems to establish the fact that to a well-informed and experienced banker the line of safety and security for the State lies closely parallel to the line of profit for his bank.

Nevertheless it must be admitted that the inauguration of the Reserve Bank is justified; it may be described as inevitable. We see, with some relief, the placing of these functions in the hands of a non-profit-earning institution, charged expressly with the duty and responsibility of watching, influencing, and where possible, controlling those tendencies, transactions, and developments which shape the credit policy of the Dominion. The troublous nature of the years 1930-1934 have demonstrated the danger of the possibility of, say, one bank breaking away from the joint counsels of the associated banks and announcing and agitating for an individual policy of deep and vital import to the financial future of the Dominion. Whether we picture such a development as being traceable to a strong confident personality desiring to impose a financial experiment on the community, or, let us say, to a bank having developed its business, or embarked its resources with insufficient "spread," and, consequently, seeking a policy which will correct this tendency for its own salvation; the result is equally to be guarded against. It may be that there is ordinarily little danger of the discretion and powers of the private banks in this country being exercised in a direction

or policy in which an obvious or appreciable danger could be discerned or stated. Even if this is so, there is the possibility that the necessity of maintaining dividends might unconsciously shut out the adoption of prompt temporary correctives, and useful and wholesale preventive measures involving a temporary sacrifice. Such a policy if necessitated by the facts at any given time, is more likely to come from such an institution as our Reserve Bank, than even from the body of men who have in the past so won our respect for their integrity and ability.

**(f) The Share Capital of the Reserve Bank.**

As already pointed out one of the first vital decisions that had to be made was whether the Reserve Bank should be wholly a State Bank with its capital resources provided for it by the State in a manner prescribed by the Incorporating Act; or should be, on the other hand, a bank with capital subscribed by private shareholders. In New Zealand, as in Australia, the difference between these two bases was well canvassed and discussed. The policy adopted in New Zealand was to have an initial Share Capital of £500,000, and it was decided to offer one hundred thousand shares at £5 each for subscription by the public. The offer was made in February, 1934, in a prospectus issued from the Treasury, and in a few days this capital was subscribed five-fold. These shares carry a fixed cumulative dividend of 5% per annum, and this dividend is guaranteed by the State.

The Act provides by Section 8, that, subject to the approval of the Minister of Finance, the capital of the Bank may, from time to time be increased pursuant to a resolution passed at a general meeting of shareholders.

No person was qualified to become a shareholder in the original capital unless he was a British subject, ordinarily resident in New Zealand; and no one person was eligible to have more than 500 shares allotted to him. As a matter of fact, when it became necessary to whittle down the

individual allotments to bring the aggregate within the limit of the number of shares available, the maximum allotment was fixed at twenty shares; that is, no person received a greater allotment than twenty shares.

As an additional capital resource for the Bank it is provided by Section 10 that on or before the date on which the Bank becomes entitled to commence business, the State shall, through the Minister of Finance, pay into the General Reserve Fund of the Bank the sum of one million pounds, and it is provided that this sum shall not be recoverable except in the event of the winding-up of the Bank.

## **2. Commencement of Business.**

The Act provides by Section 7, that, after the full amount of capital has been subscribed, the Minister of Finance shall give public notice of such subscription in the *Gazette*, and on a date to be specified by the Minister in such notice, the shareholders in the Bank shall become a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and such things as bodies corporate may lawfully do and suffer.

Such notice duly appeared in the *Government Gazette* of first day of March, 1934, and that notice specified the first day of April, 1934, as the date on which the Reserve Bank, as a body corporate, came into existence.

The Bank became entitled to commence business on a date fixed by the Governor-General by proclamation; the day in question was required by the Statute to be not later than six months after the publication of the proclamation, and in that proclamation it was to be named as the date on and after which the Reserve Bank should have the right to issue Bank Notes in New Zealand. On that date, but not before, the Bank was to be entitled to commence business. It is now a matter of history that the Reserve Bank com-



menced business and made its first issue of Notes on the 1st day of August, 1934.

### 3. Business of the Reserve Bank.

#### (a) General.

The business is stated in very general terms in Section 12 of the Act; "it shall be the primary duty of the Reserve Bank to exercise control over monetary circulation and credit in New Zealand, to the end that the economic welfare of the Dominion may be promoted and maintained."

This general statement is, in the section in question, qualified by the words "within the limits of the powers conferred on it by this Act."

We shall return to this general statement after a detailed survey of the particular powers, functions and duties as set out in Sections 13 to 22 of the Act as amended by the Finance Act (No. 2), 1934. The Reserve Bank may—

- (a) Make and issue Bank Notes.
- (b) Buy and sell gold and silver, coin or bullion.
- (c) Accept money on deposit, or on current account.
- (d) Discount, re-discount, buy and sell bills of exchange, promissory notes, and other documents arising out of bona fide commercial transactions including bona fide transactions in relation to the production, marketing, and sale of live-stock and primary products), and bearing two or more good signatures and maturing either within one hundred and twenty days after the date of the document or not later than ninety days after sight.
- (e) Discount, re-discount, buy, and sell bills of exchange, promissory notes, and other documents arising out of bona fide transactions in relation to the production, marketing, and sale of live-stock and primary products, and bearing two or more good signatures and maturing within six months after the date of their acquisition by the Bank.

Provided that the Bank shall not at any time acquire any bills or other documents under the authority of this paragraph if by the acquisition of such documents the total value of all documents acquired by the Bank under the authority of this paragraph and then held by it would exceed five per centum of the total value of the assets of the Bank.

- (h) Buy and sell New Zealand Government securities or securities of the Government of the United Kingdom, but so that the amount of the securities so held with an unexpired currency of more than three months shall not at any time exceed an amount equal to three times the paid-up capital of the Bank and its reserves.

**Note.**—The above subsections (d), (e), and (h) are taken from Section 6 of the "Finance Act (No. 2), 1934," by which enactment they were substituted for the corresponding Sub-sections of Section 13 of the "Reserve Bank of New Zealand Act, 1933."

These powers are subject to certain restrictions which will be found set out in Section 14 of the Act, which is printed as an appendix in this work.

#### **(b) The Government Banking Accounts.**

It is specially provided that all the accounts of the New Zealand Government shall be kept at the Reserve Bank, and a period of twelve months after the date on which the Reserve Bank is entitled to commence business is fixed as a transition period within which such accounts shall be transferred to the Reserve Bank. Furthermore, the Reserve Bank shall, if and when required by the Minister of Finance so to do, keep the New Zealand Register of Inscribed Stock, and shall act as agent for the Treasury in the payment of interest and principal and generally in respect of the management of the public debt.

#### **(c) The Powers Considered.**

It is apparent when the foregoing list of powers and functions is studied that the Reserve Bank has power to

undertake practically any of the ordinary functions of a trading bank. It may make and issue bank notes, it may accept money on deposit or current account, it may discount trade bills or agricultural bills, and it may grant advances. It may buy and sell currencies of other countries and act as correspondent for banks carrying on business outside New Zealand, and it may do any other banking business incidental to, or consequential upon these functions.

Whilst, however, these powers are given to and accepted by the Reserve Bank, it may be confidently expected that its ordinary policy will be to refrain from entering into competition with the trading banks.

The opinion has been expressed more than once in these pages that the Dominion owes a great deal to the trading banks for their conduct of ordinary bank business in the past. It is believed that the best interests of the Dominion will be served by permitting them to continue those functions, and with the extra safeguards to public interest provided by the peculiar functions of the Reserve Bank, the best banking services for ordinary trading bank functions will be secured to the community by the Reserve Bank refraining from competition in this direction. It is necessary, however, that to enforce its policy and its decisions, it should have the power, if it thinks fit, to embark on actual banking transactions.

#### 4. Interest Rates in the Dominion.

It is plainly apparent, for instance, that the Reserve Bank from the commencement of its business possesses great power in the matter of influencing the rate of interest within the Dominion. It is generally believed, and stated, that at the present time—March, 1934—the rates of interest current in the Dominion are still too high, and that they should be further reduced. It is clear that the powers of the Reserve Bank may be made a most potent instrument for literally pulling down the rate of interest. If it may grant advances, it may, of course, fix the rate at which it will grant those

advances, and that rate must establish a standard above which lending institutions cannot go for the best class of business. It will, in all normal times, be unnecessary for the Reserve Bank to embark on a policy of actually making advances; it will be sufficient for it to announce the rate at which it is prepared to do so. Similarly in the matter of its power to discount trade and agricultural bills; as already pointed out, all that will be necessary, except in the most exceptional circumstances, will be for the directors of the Reserve Bank to announce the rate at which they are prepared to discount first-class bills of the kinds described in Section 13 of the Act, and summarised above. It is required by Sub-section (2) of Section 13 to publish its discount rates. It is difficult to conceive of traders and farmers being content to pay a higher rate than the Reserve Bank's published rate, for the discounting of good bills with the trading banks. If there should come a "try out" of the efficacy of the Reserve Bank as an institution capable of enforcing its decrees in the matter of discount rates, it is hard to visualise the "outside" rate remaining higher than the published rate of the Reserve Bank, if the latter institution commenced the policy of buying up the best discounts offering at its published rate. The policy of lowering the discount rate on good bills would almost certainly have a tendency to lower other interest rates in sympathy. The fluidity of loanable capital within a country is such that, measured by its interest gauge, it cannot long remain at different levels.

Secondly, it would seem reasonable to expect that cheapening of the discount rate for good trade and agricultural bills might mean the inauguration of a short-term-bill money market in New Zealand, and this is a development which has been spoken of by more than one expert as desirable. Sir Otto Niemeyer said in his report of February, 1931: "If the absence of such factors as a short-term market and a bill market leaves a gap in the financial structure of a country, the process of closing such a gap

can begin in no other way, or certainly in no more effective way, than by the establishment of a Reserve Bank. A money market follows the creation of adequate central machinery, and cannot effectively exist, or be expected to exist, until the machinery is available."

It is probable that the absence of a short-term market and a bill market in New Zealand is due to the absence of the opportunities for short-term investments, which is offered by exchange dealings in populous markets which are in close proximity to numerous other similar markets. If that has been one of the causes of this hiatus in New Zealand (and it is submitted here that it is one) that cause will still operate to prevent the establishment on a large scale of a short-term money market in New Zealand. We are, however, undoubtedly at the beginning of a new financial age which is about to evolve new financial methods to meet new conditions and organisations, and it may well be that the establishment, organisation and control of a short-term market and bill market may come about, and be a healthy corrective of undesirable tendencies, and an equally available stimulant of desirable methods and tendencies in our periodical financial ups and downs.

Up to the present time, for instance, if capital raised for a specific purpose must, for a period or a series of periods, be waiting its precise employment in that purpose, there is little that can be done with it. The usual method of seeking to avoid its total unproductiveness is to place it on deposit with a Savings Bank or other financial body that accepts short-term or demand deposits at interest. This form of temporary investment is neither desirable nor reasonably lucrative and sometimes this inability to employ or dispose of capital in its waiting periods is a factor important enough to turn the scale against a major transaction which is being considered.

The creation and operation of the Reserve Bank will provide adequate machinery for establishing a short-term market in first-class bills of exchange and public securities of like nature and this might easily call out and establish a

healthy circulation, for trade and general economic purposes, of some of the large sums of money that, in the aggregate, lie dormant as trade and other debts.

### **5. The Control of the Reserve Bank.**

The control of the Reserve Bank of New Zealand is vested in a Board of Directors comprising a Governor, a Deputy Governor, three State Directors and four Shareholders' Directors; nine persons in all. The respective qualifications, methods of election, tenures of office, powers and duties are prescribed by Part II of the "Reserve Bank of New Zealand Act, 1933," comprising Sections 23 to 34 inclusive. The Governor and Deputy Governor are to be appointed from time to time by the Governor-General in Council and each holds office for a period of seven years and is eligible for re-appointment. The three members of the Board, known as State Directors, are also to be appointed by the Governor-General in Council; each is to be appointed for a period of five years and is eligible for re-appointment. The four Shareholders' Directors are to be elected by the shareholders at a general meeting and are also to hold office for five years, being eligible after each respective term, for re-election. The first four Shareholders' Directors are, however to be appointed by the Governor-General in Council.

The Act stipulates for certain qualifications. The Governor and Deputy Governor shall be persons possessed of actual banking experience, and they are required to devote the whole of their time to the duties of their respective offices. They are not permitted to engage in business, hold other directorships or hold any interest in any other bank. The State Directors have no special qualifications prescribed, but come under the general qualification provisions of Section 32, set out below. Of the Shareholders' Directors, two must be persons who are or have been actively engaged in industrial or commercial pursuits, and two must be persons who are or have been actively engaged in primary industry. In addition to the foregoing special

qualifications it is provided by Section 32 of the Act that no person shall be appointed or elected to the Board in any capacity who:—

- (a) Is not a British subject by birth; or
- (b) Is or becomes a member of either House of Parliament; or
- (c) Is employed as a servant of the Crown in any Department of State; or
- (d) Is employed in the service of any other bank, or, except as permitted by section thirty-one hereof, is a director of any other bank (the exception is that one member of the Board may, at any time, be a director of any other bank); or
- (e) Being a bankrupt within the meaning of the "Bankruptcy Act, 1908," has not obtained an order of discharge under that Act.

In addition to the nine directors above described, the Secretary to the Treasury of the Dominion shall, by virtue of his office, be a member of the Board, but shall have no vote at meetings of the Board, and none of the general disqualifications of Section 32, *supra*, shall apply to him.

The Governor of the Bank is the permanent executive controller of the institution. In the words of Section 27 he "shall be in permanent control of the administration of the assets and general business of the Bank, with authority to act and to give decisions in all matters which are not by the statute or the rules of the Bank specifically reserved to the Board or to the general meeting of shareholders."

The Deputy Governor is the Governor's understudy and in the event of the absence or incapacity of the Governor from whatever cause arising, he assumes and may lawfully exercise all the powers and functions of the Governor. Furthermore, the Governor may at any time delegate to the Deputy Governor, such of his powers and functions as he thinks fit. If such a contingency as the absence or incapacity of both Governor and Deputy Governor at the same time should arise it is provided that, in that case, the Board shall appoint



one of their number—or some officer of the Bank, to act as Governor for the time being, provided that if the contingency extends over one month in time, the approval of the appointee by Governor-General in Council is necessary.

Meetings of the Board will be summoned and held as provided by the rules of the Bank (see First Schedule of the Act) but the Act provides that there shall be an executive committee of the Board comprising the Governor and Deputy Governor and at least one other member of the Board who shall act as such by direction of the Board or with the concurrence of the Governor. This executive committee shall be competent to deal with any matter within the competence of the Board, but its decisions must be submitted to the Board for confirmation at its next meeting. This provision meets the recognised necessity for very prompt action that is apt to arise at any time in the exercise of the functions of a Reserve Bank.

### **6. Is there Political Control?**

It is generally accepted that freedom from political interference is essential to the successful conduct of banking business. In his report to the New Zealand Government Sir Otto Niemeyer said: "In the first place, the Bank must be entirely free from both the actual fact and the fear of political interference. If that cannot be secured, its existence will do more harm than good, for, while a Central Bank must serve the community, it cannot carry out its difficult technical functions, and cannot hope to form a connecting-link with the other Central Banks of the world if it is subject to political pressure, or to influences other than economics."

The question was raised in Parliament during the discussion on the Reserve Bank Bill, and it has been asked also on the platform, in the press and in the street: "Does not the degree of Government control, through the Governor-General in Council in the appointment of the Directorate of the Bank raise at least the fear of political interference?" The answer is that if ever the desire for political interference



should, in the breasts of members of Cabinet and their supporters in Parliament, obtrude itself till it becomes expressed in political policy and action, the Act shows how it could translate itself into banking policy and action. It is clear, however, that such a calamity would be due, not to the presence of the machinery in the Act, but to the emergence of the will to interfere and dominate. If, which God forbid, such a will should ever become the policy of our national executive, its least difficulty would be to alter the Reserve Bank Act so as to provide the machinery for carrying it into effect. In view of that consideration it would seem that the procedure adopted for the appointment of the directorate is to be judged, not by the worst use it could be put to, but firstly by its relation to the general scheme of which it is a part, and secondly by the exercise of the powers which the Act gives to the national executive. There is a strong case to be made for a careful and responsible picking and appointment, by the Governor-General and his advisers, of the first directorate, as contrasted with an election by a newly-incorporated constituency without mutual experience or other cohesive influences to guide them. Furthermore, the Niemeyer report and recommendation recognise the propriety, if thought desirable, of giving to the Governor-General at least the duty and right of confirmation of appointments of the Governor and Deputy Governor of the Bank. The only adverse criticism calling for consideration therefore is that relating to the appointment of three State directors by a Government that already has the power of appointment of Governor and Deputy Governor.

It is submitted that the provision is to be criticised, if at all, not on its enactment, but on its exercise. Important appointments to public positions are frequently made by the Governor-General in Council, and the traditions that have been built, in this Dominion, round the exercise of this power justify the belief that the provision, in this instance, was intended to be, and will be, exercised with a single eye to the best interests of the Dominion. Our

administration in such matters is notoriously clean, and the inauguration of the Reserve Bank's business by the appointment of men chosen for their qualities of fitness will tend to attach to it those traditions of fairness and responsible dealing which will be its best safeguard against the possible danger of future political interference. The principle of *noblesse obligé* operates not only in the sphere of so-called noble birth, but in that of character and reputation called to public service, and in this country the men chosen to guide and control the destinies of the Reserve Bank can be trusted to resist all unworthy influences and tendencies. If confirmation of this belief were wanted it can be found in the twenty-two years' history of the Commonwealth Bank in Australia. It is there fortified by the confidence and pride of the people in the Bank, and the sense of responsibility under which successive governments of all shades of political opinion have refused to encourage even the hope that they will interfere in its administration or policy. It is reasonable to believe that principle enunciated in the Niemeyer report will receive at least equal recognition in this country.

This part of the present chapter was written before any of the appointments to the Directorate were made. It has been read, for possible revision, after the appointments have been announced. It called, in the writers' opinion, for no revision.

### **7. The Statutory Policy of the Bank.**

At the time of writing this chapter, the Bank has not been in operation long enough to have put forward either a declared or acted policy to record or comment upon. There is, however, an attempt in the incorporating and enabling Act to codify the Bank's policy and the principles on which it should be based, and these will repay study.

There never has been a time in the history of banking when less confidence might be felt in seeking to forecast the policy of a new bank. The economic, financial, legisla-

tive and administrative acts and experiences of the past five years have obscured principles; varied, modified and ended some methods; and introduced new ones. It seems certain that new financial methods, public and private, must be found, to meet changed economic, industrial and even ethical ideals, and it is hardly possible yet to indicate with any confidence the nature of the impending changes. At the same time, the basic principles of our banking system have proved themselves, and, in the process, have preserved to us the possibility of recovery, and of building soundly the new superstructures.

In attempting to sketch the policy of the Bank, as it is revealed in the Reserve Bank of New Zealand Act, it must be pointed out firstly that principles rather than methods must be indicated, and tendencies rather than proved or accepted lines of conduct. Secondly, the subject matter is, in the nature of things, complicated, as being the account-keeping and financing of a complex civilisation. The caution that these considerations suggest is very apparent in Sir Otto Niemeyer's report. He speaks of that which is "probably true"; of that which "is to a great extent governed" by something else; of that which "tends to accentuate" a certain influence; of that which "would be a factor in bringing about" a state of things; of "tendencies," and "influences." If he had known less of his subject matter he probably would have written with much more confidence and precision. The result of this complexity of subject matter and its factors, is that if at any point it is desired to illustrate the working of a principle or a recognised practice, this must be done with the obtrusive consciousness of another principle, or other principles and many factors and tendencies that counteract the chosen principle or method.

Firstly, the Reserve Bank is to exercise control over monetary circulation in New Zealand. It will do that (a) by providing the necessary note-currency to facilitate the settlement of all commercial, trading and financial

transactions between private persons (including corporations). There is no problem or difficulty related to this function. The issue of notes, in the manner prescribed, and protected by the reserves stipulated for by Sections 15 to 20 inclusive of the Act will meet all requirements, and this function, in the hands of the Reserve Bank, will operate as smoothly and effectively in the future as it has in the past in the hands of the associated banks.

(b) By providing the necessary note-currency for state requirements. This will involve co-operation with the Dominion Treasury, and enquiry into the nature of the projects and policies for which money is required, and the proposed basis for repayment of the indebtedness and withdrawal of the notes. As a matter of fact, it is hardly likely that this will ever be a monetary problem. The Dominion's system (Governmental and private) of effecting value-transfers by cheque is so widespread and well recognised, that greatly increased State spending could be facilitated without any appreciable increase in the average note issue.

Secondly, the Reserve Bank is to exercise control over credit in New Zealand. In so far as the use of private credit is concerned, if it is to be marshalled, controlled, and made available for private use, that will continue to be a function of the trading banks. If there should develop, in the exercise of this function by the private banks, any restriction, discrimination, or lack of restriction or discrimination which seemed to the directors of the Reserve Bank to be opposed to the economic welfare of the Dominion, they could, and doubtless would, endeavour, by the exercise of their powers, to conduct banking transactions and, by their influence over and control of interest and exchange rates, to correct such tendency. It should be noted in this connection, that the Reserve Bank has no power to lend against the security of real property; this fact may tend to limit its power to interfere in the interests of the primary industries.

In so far as private credit is to be marshalled, controlled, and made available for public use, that will still be a function of the State in the form of taxation and State borrowing. In either case, the Reserve Bank will be only a collecting agent for the State.

There still remains the marshalling, control and availability of public credit, the credit of the Dominion, to be considered. This will be undertaken only for the benefit of the State, and any formula or scheme for its use must be formulated by the Government of the day. It will be the function of the Reserve Bank to examine, consider and weigh these schemes and their related proposals for monetary circulation. See, in this connection, the paragraphs headed "The Bank and the State," at page 194 *et seq.* The proposals of the Government for accommodation in the form of credit and money must be tested by precisely the same principles as those applied to applications for loans by private borrowers. These are indicated in the questions: How much do you want; for what purpose are you seeking to raise it; can that purpose be relied on to supply its own repayment of the loan; if not, what security do you offer and from what source do you propose to repay? Some impatience with these questions is expressed now-a-days by well-meaning enthusiasts who point out that all the resources and potentialities of the Dominion are the basis of the credit of the Dominion, and that all that we can raise and spend in the Dominion is still there—and is a sufficient backing for the immediate issue of legal tender notes. That is true, but it is as well to visualise the whole transaction before lightly embarking on the facile spending of portion of it. "The future production of the Dominion is the basis of the Dominion's credit." That is true; but let us examine it fully. Let us suppose that on the strength of that truth we give to the Minister of Pensions, let us say, State notes to the extent of \$1,000,000 for extra payments in March, 1934, to all pensioners. The "future production of the Dominion" included John Brown's woolelip on his "Utopia"

Station for say 1934-5 and 1935-6 seasons, and the cheese and butter output of the All Gold Factory for the same seasons. In the two seasons in question the wool produced in all £20,000 in London and the cheese and butter £18,000. How can those proceeds be connected with the March, 1934, payments to the pensioners, and applied in reduction? Only by taxation. John Brown claims the £20,000, when it is realised, as his, and says that it is all earmarked to pay his interest, rates, taxation, wages, living expenses, and a small margin for free spending. The All Gold factory similarly claims the whole of the £18,000, when it is realised. The only way that any of that £38,000 can be made available to contribute its share (as part of the "production of the Dominion") to provide real wealth to replace the privately-owned wealth that the pensioners ate up and wore out in 1934, is by taxation. It is, further, quite arguable that already so much is taken by way of taxation to make good earlier spendings against "the future production of the Dominion," that taxation cannot be increased without discouraging and slowing down industry, checking other state revenue, and increasing unemployment.

### **8. The Working Policy.**

The Bank must develop a policy to enable it to exercise control over the credit situation in New Zealand. Those who control the Bank take charge in a storm, and are required to set a course over a tract where landmarks have altered or disappeared and soundings have varied. To quote again the guarded language of the Niemeyer report, they may expect to "exercise a gradually increasing influence over the credit situation in New Zealand," and "by timely action minimise the disturbances in either direction."

The Reserve Bank may at times seek to restrict credit by raising the rate of interest, and, at other times, to expand it by lowering the rate. If necessary, these movements may be stimulated respectively by selling securities on the open

market or, on the other hand, by buying them. The ready and sustained selling of securities by the Reserve Bank will firstly tend to draw cash resources into the Bank and, secondly, as prices drop, it will raise the rate of interest, calculated on the amount invested by the buyer. Both of these effects tend towards the same result as the raising of the published discount and loan rates; all of these acts tend to restrict credit. Conversely, if the Reserve Bank embarks on a policy of ready and sustained buying, it will put its cash resources into circulation, and, as prices tend to rise, so will the rate of interest, calculated on the amount invested by the buyer, tend to fall, and this cheapening of money, coming into operation, together with a fall in the announced discount and advance rates, tends to expand credit. With a directorate comprising financial experts, the Government's first financial officer, and members chosen because of their knowledge of the agricultural and commercial structure and habits of the Dominion, a definite reason and cause for a seasonal, or expected ebbing and flowing of the tide of credit, will often be discoverable. Where such a cause can be determined with reasonable certainty the Bank can exercise its functions to counteract the detected tendency before the mental influenza of "depression consciousness" begins to operate, and to give the movement an impetus and volume that the real causes do not justify.

By its control of the exchange rate between New Zealand and London, the Bank can wield a means of encouraging and discouraging imports and exports from time to time, as circumstances require. This power must be exercised to preserve a sound position between debtor New Zealand and creditor England. A disproportion between our imports and our exports will, on the one hand tend to leave our interest unpaid, or our indebtedness increasing in London, or both; on the other hand, it may mean the accumulation of money in England in reduction of our indebtedness there when that money might be used to better advantage, for



all concerned, by its transmission to New Zealand as goods. The corrective for the first state of affairs would be an increase in the exchange rates; an increased bonus on the London proceeds of our exports sold there and an increased rate charged on New Zealand bills drawn to pay for English goods. The corrective for the second state of affairs would be the precise opposite, a fall in the premium offered on farmers' bills payable in London and a fall in the rate charged on importers' bills payable in Wellington. No other factors must enter into this problem; the Reserve Bank, true to the traditions of sound international banking, will seek to develop a keen sense of financial "touch" with which to feel its way from time to time to a beneficial use of this delicate instrument.

As organiser and controller of a clearing house system for the trading banks, the Reserve Bank will preserve and publish exact and constant records of the volume of our cheque and bill currency. Each trading bank will be required to keep an account with the Reserve Bank, and to settle at short intervals the balances due to or by other banks on their exchange transactions. Each bank will be required to keep a sufficient balance with the Reserve Bank to enable it to draw its cheques or orders as required, in favour of other banks, on these settlements. The figures ascertainable from these exchange transactions will enable the Reserve Bank to publish the Dominion figures indicating the ebb and flow of private currency, mostly in the form of cheques. As a matter of fact—since the war—the banks have not made settlements at all. There have been seasonable changes in their relative positions but, in the very nature of the case, with each bank working on the same sound principles as its fellows, a seasonable ebb is followed by a seasonable flow and their inter-bank transactions must tend to balance. International trade would balance; each country's exports would equal its imports, if trade were carried on without artificial restrictions, and each country's internal trade and aggregate international transactions were



governed by experts who conferred together and sought to work by mutually recognised principles and policies. The mutual relations and transactions of the Dominion's trading banks in the last twenty years exemplify this principle on a small scale.

The Reserve Bank will act as the banker of the Government of New Zealand, and as such will take over from the trading banks the various public accounts. At certain seasons, when income tax falls due, for instance, and in the flux of the importing season, when taxes are being paid to the collecting State departments, balances will tend to flow from the trading banks to the Reserve Bank. This will express itself in the transfer (by way of settlement) from the trading banks to the Reserve Bank, firstly, of the Reserve Bank's own notes; secondly, at times, of sterling credits in London; thirdly, if necessary, first class liquid securities in New Zealand. As the Government continues steadily, through its civil service salaries, and through its public works and other State activities, to expend its revenue and receipts, the flow will be reversed, expressing itself in the transfer to the trading banks of notes, London credits and other acceptable forms of wealth and credit tokens and accounts. The bank will also undertake the issue and management of New Zealand Government loans and local body loans. Here, it is to be hoped, the Reserve Bank will gradually attain a position in the London and other oversea markets, that will enable it to raise loans when desired, without requiring the Government to pay toll to all the revered forms of financial woolly aphisms that, in the past, in the sheltered financial climate of "the City" have been able to suck nutriment from the tender and secluded parts of established procedure. In his book, "Australia's Government Bank," Dr. L. C. Jauncey tells (see p. 85) of the Commonwealth Bank of Australia being able to raise loans for the Commonwealth Government in London at an average cost of 4s. 6d. per cent.

The Reserve Bank must, if it is to be a success, maintain cordial relations, based on trust and respect, with the

Government of the Dominion. This may sound like either a counsel of perfection or a mere platitude, but it indicates the supreme test to which the personal qualities of its directors and governors will be put. Given recognition by both Government and Bank of a common end, viz., the economic and monetary stability of New Zealand and a sense of responsibility working in the minds of worthy men, and this desirable relationship will be maintained. The governmental executive and the Bank directorate are truly two parts of a single governing organisation for New Zealand, and success will require an adherence to sound financial principles by the popularly elected executive and a broad vision of the country's needs and interests by the custodians of the money bags.

The Bank, however, must not submit to any outside control. It must resist political control, which, in a bid for popular support might represent the thrust of a crow-bar into a delicate machine. It must resist overseas influences if they do not commend themselves to the best judgment of its New Zealand directorate. New Zealand is a debtor country, organised so far in dependence on the expected ready sale in England of its primary produce. It is now possibly on the threshold of a new phase of economic development, and new methods of finance are in process of development. These must be studied and approached from New Zealand's standpoint, and it by no means follows that principles and policies applicable to the conditions and structure of other countries will serve this Dominion.

Finally, sympathetic and friendly relationships must be maintained between the Reserve Bank and the trading banks. If this is not accomplished, the difficulties of all parties will increase, and the best interests of the Dominion will suffer. Theoretically, this position would seem hard of attainment and almost impossible of retention, but experience in analogous cases is encouraging. Theoretically the requirements of sound banking policy in modern conditions, viz., the keeping of funds in a sufficiently liquid form

to meet all current demands instantly and, at the same time, sufficiently well invested to cover working expenses and earn a profit—almost involve a contradiction in terms and a practical impossibility. In practice, it is accomplished by the training and choice of men who feel justified in throwing into the scales the confidence which they expect from the public and which they rely on in their policies and transactions. It is this factor—the human equation—tempered by a sense of responsibility and matured by experience that can and must be relied on to secure the spirit of co-operation. If this is not forthcoming, the sequel has long been enunciated as a warning: “When the leaders have no vision, the people perish.”

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## CHAPTER XIII.

## LEADING CASES IN BANKING LAW.

**(1) Accounts kept by Customer at Different Branches of the same Bank—**

- Debit balance at one branch and credit balance at another;  
—Has Bank right to charge Interest on Debit Balance?

*The National Bank of New Zealand Ltd. v. Grace,*  
8 N.Z.L.R., S.C. 706

*The facts:—*

(1) The defendant Grace had an account with a credit balance at the Wellington branch of the bank, and an account with a debit balance at the Tauranga branch of that bank.

(2) These accounts were current accounts operated in the ordinary way by cheques drawn on the respective branches. The usual and ordinary course of banking was pursued.

(3) The bank knowingly followed the usual course of banking practice by keeping and viewing these as separate and distinct accounts, by charging interest on the debit balance, and by refraining from transferring the credit balance at one branch to cover the debit balance at another branch, unless requested to do so by the customer, or unless exceptional circumstances arose requiring the bank to exercise its right to consolidate the accounts. The bank gave no special notice to the defendant of this customary course of business, and it was admitted that the defendant did not know of it, and that he had never expressly consented to the bank so acting in relation to his accounts, or so charging interest on the debit balance without reference to the credit balance.

*The issues:—*

The questions submitted to the Court were: Was the bank entitled to charge interest on the Tauranga balance without reference to the credit balance at Wellington, (a) in view of

the fact that the bank was one institution and that the accounts were therefore in law but one account, (b) in view of the fact that, whatever may have been the position previously, when the bank came to sue the defendant it must then be viewed as one party and, as such litigant party, was bound to consolidate these accounts, and in the process of consolidating them to correct the interest charges by viewing the Tauranga account from day to day as being coalesced with the Wellington account?

*The decision:—*

It was decided that the bank had a right to charge the interest which it claimed. Dealing with the first ground on which it was put, the learned Judge said he had no doubt. He said: "It is admitted that if the defendant had kept an account at one branch of the bank only, and that account was overdrawn, he would be liable to pay interest on his overdraft, and must be held to be aware that he was so liable; and, this being admitted, it is clear to me that the bank was justified in charging such interest, notwithstanding that the defendant had an account with another branch of the bank. It is not admitted, and cannot be assumed, that the bank officials at the one branch were aware that the defendant had an account at another branch, still less that they were aware of the state of that account from day to day, and it must be borne in mind that although interest is only charged half-yearly on the day when the bank makes up its half-yearly balance, it is not charged on the amount then overdrawn, or on the amount overdrawn on any particular day, but on the fluctuating overdraft of the customer during the half-year then ended." Again: "In the present case, the bank might at any time have treated the accounts kept at the two branches as one account; and in like manner the defendant might at any time have converted them into one account by transferring his credit balance at Wellington to the credit of his account at Tauranga. But, neither party having amalgamated the accounts, both must be taken to have concurred in their being treated as separate. The defendant must be supposed

to have known the state of his account with each branch, and, by allowing the one to remain overdrawn, tacitly consented to interest being charged upon it." The second ground of the contention was more subtle, and the Judge confessed to feeling some doubt on it at first. He found, however, on consideration, that he must come to the same conclusion as under the first line of argument. He said: "I am of opinion that the bank is entitled to take the two accounts as they stand on the day when the action is commenced, treating them up to that day as separate accounts, but deducting the amount of credit on the one account on that day from the debit balance on the other at the same date. To hold that the bank must recast both accounts by correcting the balance between them from day to day during the whole time they had been open would be unreasonable where accounts had been running for a long series of years, and the principle is the same where they have not been of long duration. . . . . Until the accounts were closed and the balance sued for, the accounts must in my opinion be considered as separate accounts for all purposes unless either party took steps to combine them."

**(2) Relationship of Banker and Customer—**

Set-off of debts between the parties at different branch banks. *The National Bank of New Zealand Ltd. v. Heslop*, 1 N.Z.L.R., C.A., 47.

*The facts:—*

Heslop had a current account at the Reefton branch of the National Bank. The Greymouth branch of that bank had discounted a bill of exchange of which Heslop was the acceptor for the sum of £34 payable three months after date at the Bank of New Zealand, Reefton. This bill was dishonoured at maturity, and remained unpaid in the hands of the National Bank as holder. With full knowledge of these facts, Heslop paid into the Reefton branch of the National Bank the sum of £14/16/6, making at the time no appropriation of it to any particular purpose but simply paying it in

in the ordinary way unconditionally. The manager of the National Bank at Reefton thereupon informed Heslop that he would not be at liberty to draw a cheque against this sum of £14/16/6 as his acceptance, still held by the bank, was unprovided for, and that the bank proposed to appropriate the sum paid in by him in part payment of it. The plaintiff nevertheless drew on the Reefton branch of the bank a cheque for £14/16/6, and the bank dishonoured it. Heslop thereupon brought an action claiming £100 damages, on the ground that he was injured in his credit and reputation by the bank's action.

*The point at issue:—*

Was the bank entitled to set off a credit balance in Heslop's name at one branch against a debt due by him at another branch?

*The decision:—*

The case was first heard before the Westland District Court before the District Judge and a jury, and on the Judge's direction that the bank in the circumstances described above could not legally debit the customer's account with a pre-existing debt due to it by another branch without the customer's authority, the jury returned a verdict for Heslop for £100, the full amount claimed. On appeal, this judgment was reversed, and it was held that a bank has a right at one of its branches, where money has been paid in to the credit of a customer without appropriation, to set-off a dishonoured acceptance of the customer held by the bank at another of its branches. The principle underlying the decision of the appellate Court was that the relationship between customer and banker was that of a debtor and creditor, and that the ordinary common law principle of set-off applied. Mr. Justice Johnston said: "We must consider what was the right of the bank when the amount in question was paid in. The bank had then become the creditor and was entitled to sue the plaintiff for the amount of the dishonoured bill. There was no stipulation as to how the money paid in should be disposed of, and it was perfectly competent for the bank to set their claim

under the bill against the money so paid in by the plaintiff. The bank had a right to say, 'We dishonoured your cheque because you owe us a larger sum of money.' " Mr. Justice Richmond said: "The question is one of extreme simplicity. The respondent paid money into the bank without any restriction as to appropriation. At that time the bank was a creditor of the respondent. There was nothing to prevent the bank, therefore, from appropriating the money lodged in full discharge of the debt due to it. My opinion proceeds on assumption that there was no specific appropriation."

It is submitted that this right of set-off by the bank as a creditor is exercisable in respect of any class of transaction which leaves the bank the creditor of its customer. It is not limited to claims arising out of dishonoured bills of which the bank is a holder.

### **(3) Status of Post-dated Cheque—**

Is it payable on demand or is it a bill payable at a future date?

*Pollock v. Bank of New Zealand*, 20 N.Z.L.R. 174.

*The facts:—*

Pollock was a butcher and a customer of the Bank of New Zealand at Wellington. On the 6th December, 1900, he gave a post-dated cheque for £15/17/9, dated the 15th December, 1900. The cheque was presented for payment on the 12th December and paid, notwithstanding that it was post-dated. On the 13th the plaintiff gave a cheque dated the 13th for £38/11/0; it was presented that day and dishonoured by reason of insufficient funds. If it had not been for the payment on the previous day of the post-dated cheque, there would have been sufficient funds. Pollock sued the bank for damages for wrongful dishonour.

*The issue:—*

Was the payment by the defendant bank of the post-dated cheque on the 12th December wrongful or not? In effect, the issue was, is the post-dated cheque a recognised and permissible form of cheque? If so, the bank had acted



wrongly and was liable. It was argued for the plaintiff that the post-dated cheque was recognised by the Act and by the practice of banks and commercial men. On the other hand, it was contended for the defendant bank, principally in reliance on a Queensland case, that (1) whatever may be the contract between drawer and payee of a post-dated cheque, a different rule applied as between banker and customer; (2) that under the Bills of Exchange Act the date of a bill is only deemed to be the date of issue until the contrary be proved; (3) that the bank was entitled to assume that the *date of issue* was the real date of the cheque, and that presentation for payment before the date written on the cheque showed that that date was not the true date of issue. A cheque was defined by the Act as a bill of exchange drawn on a banker payable on demand. On the reasoning of the Queensland case, the bank was entitled to treat the cheque as a bill and in effect to accept the bill and hold the funds for its payment on its due date, and that if it had done that the result would have been the same as that which followed from the course actually taken by the bank.

*The decision:—*

The Queensland case *Magill v. The Bank of North Queensland* (1895) L.J. Rep. (Queensland), page 262, was not followed. It was held that the post-dated cheque was a well-established mercantile instrument and was not invalid by reason only that it was post-dated. Stout, C.J., said: "A post-dated cheque is a direction to a banker to pay the cheque on the date it bears, and there is in my opinion no 'express provision' that declares that this date can be altered to the date of issue." Mr. Justice Williams said: "I am of the same opinion. To arrive at a different conclusion it would be necessary to decide that a post-dated cheque was payable on a demand made by the holder at any time before the date and that the holder could sue upon it if not then paid. This is entirely contrary to the mercantile custom. A person who gives a post-dated cheque gives it with the intention that it shall not be presented before the date, and the person who

receives the cheque from the drawer knows that it is given with such an intention. Everyone to whose hands the cheque comes before the date of it, including the banker upon whom it is drawn, has, by the fact of the date on the cheque, notice of the intention with which it was given by the drawer and received by the original holder. The 13th Section of the Bills of Exchange Act provides that the date of a bill is to be deemed the true date unless the contrary be proved. It does not prove the contrary to show that the mere manual operation of drawing took place at an earlier date, unless it be also shown that it was the intention of the parties that the bill should have currency as from that date."

The English Courts arrived at the same decision about twelve years later in *Robinson v. Benkel* (1913) 29 T.L.R. 475.

#### **(4) Banker and Customer—**

Customer's Trust Account — Set-off between Trust Account and Ordinary Account.

*McMillan & Nathan v. Bank of New Zealand*, 1 N.Z.L.R., S.C. 332.

*The facts:—*

Edward Purser was a draper whose account at the Defendant bank was overdrawn £287. Purser executed a deed of assignment to the plaintiffs McMillan & Nathan as trustees for the benefit of his creditors, and he informed the bank that he had executed a deed by which the creditors gave him time to pay his debts, allowing him to continue his business on condition that he set aside one half of his gross takings for distribution amongst his creditors, the other half being retained for current working. Purser then opened another account at the bank for the purpose of carrying on the business, and it was headed "Edward Purser, Trust Account." The creditors refused to assent to the deed, and Purser filed in bankruptcy. On the same day, but before Purser filed in bankruptcy, and without knowing of his intention to do so, the bank transferred the balance £209 standing

to credit of the trust account to the credit of the original overdrawn account, reducing the debit balance to £78. The bank had never, as creditor, consented to the deed of assignment. The creditors' trustees claimed to recover the £209 from the bank;—the bank claimed the right to set it off against their original claim.

*The issues:—*

Was the money in the trust account, £209, in the hands of the bank subject to any trust in favour of Purser's creditors? For the plaintiffs it was argued that the bank was aware that the money was trust money, and that the legal position was concluded by the case *ex parte Kingston* in re *Gross*, 25 L.T.R., 250. For the bank it was argued that the account was opened by Purser for his convenience, and that if there were a trust it would be a trust in favour of the creditors under the deed and not under the bankruptcy;—that the deed was never assented to, and therefore that trust never became operative, and therefore the property in the account remained vested in Purser. The bank's counsel distinguished the case of *ex parte Kingston* in that there the fund was clearly marked as a trust fund belonging to another person.

*The decision:—*

It was held that the bank was entitled to set-off the £209 standing to credit of Purser's trust account against his overdraft account. The deed of assignment was never acted upon in any way. The creditors refused to accept that trust, and no creditor ever claimed the benefit of it. The trust account was opened by Purser of his own accord, and the fact that it had been opened was never communicated to the trustees. The current receipts from the business were therefore left entirely at Purser's own disposal, and on the day when the bank transferred the balance Purser might have drawn a cheque for the amount in favour of whom he pleased.

*Comment:—*

This judgment should be read in conjunction with the heading "Trust Accounts" in the chapter "Banker and

Customer." It indicates the wisdom of the banking practice of opening trust accounts with the heading Trust Account *simpliciter*, and refusing to take a heading that indicates a definite or specific trust.

**(5) The Relationship of Banker and Customer on Current Account—**

It is Debtor and Creditor—Cause of Action by Customer—Is demand on Banker necessary?

*N. Joachimson* (a firm name) *v. Swiss Bank Corporation* (1921), 3 K.B., 110.

*The facts:—*

"*N. Joachimson*" was the trade name under which three men carried on business in London. They were all Germans but one of them was a naturalised British subject. On the 1st August, 1914, the partnership was dissolved by the death of one of the partners and there was, at that time, £2,321 standing to the credit of the firm's account in the defendant bank's books. No alteration was made in this balance between the 1st August and the 4th August, 1914, on which date the Great War broke out and the bank's customers became, in effect, alien enemies. After the Armistice, namely, on June 5th, 1919, one of the partners who undertook the winding up of the firm's affairs, sued the bank to recover the sum of £2,321 as money lent by the plaintiffs to the bank, or, in the alternative, as money had by the defendant for the use of the plaintiffs and the plaintiffs alleged that the cause of action they relied on arose on or before the 1st August, 1914. It was admitted that no demand had been made on the bank for repayment of this sum prior to the commencement of the proceedings. The bank defended the action on the ground that as no demand had been made for the money, no right of action had arisen.

*The issues:—*

In the relationship of banker and customer is a demand by the customer for the amount of his balance or any part of it necessary before a right of action against the bank arises? It is commonly accepted that the relationship between banker and customer is that of debtor and creditor and,

further, that, assuming that relation, it is the duty of the debtor to seek out his creditor and pay his debt without demand.

In the King's Bench Division of the Court, a learned Judge held, on the authority of certain cases cited, that the debt owing by the banker to his customer was in the same position in the foregoing respects as a debt owing by any other debtor and could be sued for without demand. He therefore gave judgment for the plaintiffs. This judgment was appealed against by the bank and the following decision was that of the English Court of Appeal.

*The decision:—*

It was held by the Court of Appeal that whilst in general terms the relationship of banker and customer was correctly described as that of creditor and debtor, there were, in the very nature of things, certain implications which imported conditions into it, different from those obtaining in the case of ordinary trade debtors and creditors. It was therefore held that in the circumstances of the case as between banker and customer, no obligation to pay arose until a demand had been made on the banker and consequently there was no right of action until a demand had been made.

The following useful summary of the terms of the contract between the banker and customer is taken from the judgment of Atkin, L.J. After stating that he was unable to accept the contention that the banker was to be viewed as an ordinary borrower of money and under the ordinary obligation to seek out his debtor and pay without demand, he continued as follows:—

“ I think that there is only one contract made between the bank and its customer. The terms of that contract involve obligations on both sides and require careful statement. They appear upon consideration to include the following provisions. The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to

repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept. Whether he must demand it in writing it is not necessary now to determine. The result I have mentioned seems to follow from the ordinary relations of banker and customer, but if it were necessary to fall back upon the course of business and the custom of bankers, I think that it was clearly established by undisputed evidence in this case that bankers never do make a payment to a customer in respect of a current account except upon demand."

The appeal was allowed and judgment was entered for the defendants.

**(6) Banker and Customer—Obligation of Secrecy—**

What is the Implied Contract?

*Tournier v. National Provincial and Union Bank of England* (1924) 1 K.B., Page 461.

*The facts:—*

Tournier was a customer of the defendant bank and his account had become overdrawn to a small extent. The defendants pressed him to pay off this amount and he agreed to reduce his debt by payments of £1 per week. He made three weekly payments and then the instalments ceased. A couple of months later he obtained employment in the service of a company named Kenyon & Company, under a three months' contract as a traveller and salesman.

Soon after the commencement of the employment referred to Tournier received a cheque for £45, drawn in his favour by Woldingham Traders Limited, who were also customers of the same branch of the defendant bank. The plaintiff did not pay that cheque into his account but when it came to be presented through the Exchanges for payment by the defendant bank, they noted that it was payable to the plaintiff and they made inquiries to find where it had gone. It was traced by means of the bank stamp to the London City and Midland Bank. The manager of the defendant bank rang up that collecting bank and asked who was the customer for whom payment of this cheque of £45 had been collected, and he was told that it was a bookmaker, named Lloyd. The manager of the defendant bank then rang up Tournier's employers, Kenyon & Company, and had a conversation with two directors of that company. He told them that Tournier was indebted to the bank, that he had not replied to several letters that had been written to him, and he informed them of the cheque for £45 in Tournier's favour, drawn by Woldingham Traders Limited, and also that he had traced the cheque to the credit of a bookmaker's account. The result of this communication to Kenyon & Company was that Tournier lost his employment at the end of his three months' agreement. He thereupon brought an action against the bank, firstly for slander and secondly for breach of an implied contract that the defendants, as his bankers, would not disclose the state of his account or any of his transactions to third parties.

We are not interested in the action for slander but it is proposed here to deal with the claim that the bank had been guilty of a breach of an implied contract to maintain secrecy in relation to its customer's affairs.

*The issues:—*

Is the bank under an obligation to preserve secrecy in relation to its customers' affairs? Must this be the matter of express contract between the banker and each customer, or is it an implied term of the relationship of banker and cus-



tomers? Is it a contract that imposes an absolute duty of secrecy on the bank, or are there circumstances in which the banker may and should tell? If so, what are the qualifications of the duty? Does the duty extend only while the relationship of the banker and customer exists, or should it be maintained after the customer has ceased to be a customer?

*The decision:—*

It was held in the Court of Appeal that there is a contract implied in the relationship of banker and customer, according to which the banker must maintain secrecy in relation to the customer's affairs; secondly, that it is not an absolute duty but that it is subject to qualifications, and thirdly, that in relation to knowledge gained by the banker in his character of banker towards that customer, the obligation of secrecy exists after the relationship of banker and customer has ceased.

The following passages from the judgments are informative: *Banks, L.J.*, after stating emphatically that there is no absolute contract of secrecy under all circumstances, said: "At the present day I think it may be asserted with confidence that the duty is a legal one arising out of the contract and that the duty is not absolute but qualified. It is not possible to frame any exhaustive definition of the duty. The most that can be done is to classify the qualification and to indicate its limits . . . . On principle I think that the qualifications can be classified under four heads:

- (a) Where disclosure is under compulsion by law;
- (b) Where there is a duty to the public to disclose;
- (c) Where the interests of the bank require disclosure, and
- (d) Where the disclosure is made by the express or implied consent of the customer."

*Scrutton, L.J.*, delivered himself of a neatly framed introduction to the precise subject matter with which we are now dealing. He said: "It is curious that there is so little authority as to the duty to keep customers' or clients' affairs secret, either by banks, counsel, solicitors. or doctors. The



absence of authority appears to be greatly to the credit of English professional men, who have given so little excuse for its discussion." . . . . . (He continues) "I think it is clear that the bank may disclose the customer's account and affairs to an extent reasonable and proper for its own protection as in collecting or suing for an overdraft; or to an extent reasonable and proper for carrying on the business of the account, as in giving a reason for declining to honour cheques drawn or bills accepted by the customer when there are insufficient assets; or when ordered to answer questions in the Law Courts; or to prevent frauds or crimes."

"I doubt whether it is sufficient excuse for disclosure in the absence of the customer's consent, though it was in the interests of the customer, where the customer can be consulted in reasonable time and his consent or dissent obtained. I think also, in accordance with well-known authorities on the duties and privileges of legal advisers, that the implied legal duty towards the customer to keep secret his affairs does not apply to knowledge which the bank acquires before the relation of banker and customer was in contemplation or after it ceased; or to knowledge derived from other sources during the continuance of the relation. For instance, the bank hears from an entirely independent source that one of its customers has speculative dealings in oil. May it disclose that fact to another of its customers also interested in oil? As we have only to imply terms which the parties must necessarily have contemplated, how can it be said that it is a necessary term that the bank shall not talk about the customer at all, though the subject matter of its conversation is not derived from its dealings with the customer?"

*Atkin, L.J.*, said, in the course of his judgment: "Is there any term as to secrecy to be implied from the relation of banker and customer? I have myself no doubt that there is. Assuming that the test is rather stricter than Lord Watson would require, and is not merely what the parties as fair and reasonable men would presumably have agreed upon, but what the Court considers they must necessarily have agreed

upon, it appears to me that some term as to secrecy must be implied. . . . I come to the conclusion that one of the implied terms of the contract is that the bank enter into a qualified obligation with their customer to abstain from disclosing information as to his affairs without his consent. I am confirmed in this conclusion by the admission of counsel for the bank that they do, in fact, consider themselves under a legal obligation to maintain secrecy. Such an obligation could **only** arise under a contractual term. . . . The first question is: To what information does the obligation of secrecy extend? It clearly goes beyond the state of the account, that is, whether there is a debit or credit balance, and the amount of the balance. It must extend at least to all the transactions that go through the account, and to the securities, if any, given in respect of the account; and in respect of such matters it must, I think, extend beyond the period when the account is closed or ceases to be an active account.

“It seems to me inconceivable that either party would contemplate that once the customer had closed his account the bank was to be at liberty to divulge as it pleased the particular transactions it had conducted for the customer while he was such. I further think that the obligation extends to information obtained from other sources than the customer’s actual account, if the occasion upon which the information was obtained arose out of the banking relations of the bank and its customers—for example, with a view to assisting a bank in conducting the customer’s business, or in coming to decisions as to its treatment of its customers. Here again, counsel for the bank admitted that the bank treated themselves as under such an obligation and this, I think, would be in accordance with ordinary banking practice. In this case, however, I should not extend the obligation to information as to the customer, obtained after he had ceased to be a customer.”

Finally, as to an example of disclosure with the consent of the customer, the learned Judge said: “A common example of such consent would be where a customer gives a banker’s

reference. The extent to which he authorises information to be given on such a reference must be a question to be determined on the facts of each case. I do not desire to express any final opinion on the practice of bankers to give one another information as to the affairs of their respective customers, except to say it appears to me that if it is justified it must be upon the basis of an implied consent of the customer."

**(7) Cheque Dishonoured with answer "Refer to Drawer"—**

Are these words capable of defamatory meaning?

*Flach v. London and South Western Bank Limited* (1915)  
31 T.L.R., 334.

*The facts:—*

This case arose out of the extraordinary happenings in England during the early days of August, 1914, immediately after the Declaration of War against Germany. A moratorium was declared within a day or two after the war and all debts of more than £5 each, due and payable on the 4th August, 1914, were postponed for one month. Mrs. Flach was a customer of the defendant bank and, on the 4th August, she had in her current account a balance exceeding £5 and on that day she drew a small cheque. The bank obviously treated her account as at the 4th August as a separate account which they referred to as the "Pre-moratorium Account" and they opened a new account with her lodgments after the proclamation of the moratorium. Her cheque was presented to the bank on the 10th August. There was enough to meet it in the Pre-moratorium Account, but not enough to meet it in the Post-moratorium Account. The bank returned the cheque with the answer "Refer to Drawer," and the drawer of the cheque, the plaintiff, sued the bank, firstly for breach of its contractual duty to honour her cheque, and secondly for libel. The alleged libel consisted in the words "Refer to Drawer," and evidence was led to show that they meant that the drawer had no money available to meet the cheque.

*The issues:—*

(1) Did a contractual duty rest on the bank on the 10th August, to pay the plaintiff's cheques against the balance of her Pre-moratorium Account?

(2) Were the words "Refer to Drawer" capable of a libellous meaning?

*The decision:—*

The Court answered both questions in favour of the Defendant bank. It held that the effect of the moratorium was to suspend the contractual right of the plaintiff and the obligation of the defendant to charge cheques against the balance of a Pre-moratorium Account.

In the matter of the alleged libel, Mr. Justice Scrutton, in his judgment said that the words "Refer to Drawer," in his opinion, in their ordinary meaning, amount to a statement by the bank, "We are not paying, go back to the drawer and ask why"; or else, "Go back to the drawer and ask him to pay." The learned Judge further said that in the view he took of the case, the bank was justified in not paying under the moratorium and he did not think that it was possible to extract a libellous meaning from what had been said by the bank. Evidence had been given, however, to the effect that "Refer to Drawer" meant that there was not money available to pay the cheque. If that was so, then, on the view that he took of the moratorium proclamation, the statement was true and therefore not libellous.

*Comment:*

Bankers should not seek to extract too much from this judgment; a note of it is given merely as containing a judicial pronouncement on the meaning of the words "Refer to Drawer." They are not capable of a defamatory meaning, because, when all the circumstances of the case are taken into account, they may be found to be just as capable of a harmless as of a harmful implication. This, however, would not help a banker if in fact he dishonoured a cheque with that answer in circumstances where he was under a contractual duty to pay.

**(8) Banker and Customer—What is a Customer?—When does he become a Customer?**

*Ladbroke and Company v. Todd* (1914) 111 T.L.R., 43.

*The facts:—*

The defendant Todd was a private banker. The plaintiffs, Ladbroke and Company, drew a cheque in favour of one Jobson for £75—a University undergraduate at Oxford. The cheque was stolen before it was delivered to the payee. Immediately afterwards, and apparently before any inquiries were put in train, a young man gave the name of Jobson, went to the defendant's bank, produced the cheque in question and stated that he desired to open an account. The bank officials agreed to accept the account, and the usual procedure was gone through. The new customer endorsed the cheque in the name of Jobson and gave a specimen signature in the name of Jobson in the bank's specimen signature book. The cheque was duly lodged to his credit and some discussion took place as to when the cheque would be cleared, the pseudo-Jobson being informed that he could not draw against the amount of the cheque until it was cleared. A few days later, the customer came back to the bank, ascertained that the cheque had been cleared and drew a cheque on his account. He engaged in conversation with the bank accountant on this visit and stated that he was a University undergraduate and that he desired to take money to Oxford, that he had opened this account because he did not want to pass Ladbroke's cheque through his Oxford account, seeing that the cheque was for a gambling transaction. This seemed reasonable to the accountant at the defendant bank and no question was raised as to the *bona fides* of the transaction.

When the fraud was discovered, the plaintiffs sued the defendant for damages for wrongful conversion of the cheque.

*The issue:*

Was the pretended Jobson a customer of the bank? If so, and if the bank had acted without negligence in collecting the cheque for him, it was protected by Section 82 of the Bills of Exchange Act. If it failed to establish either of these

points it was clearly liable to Ladbroke and Company and the true owner of the cheque which had been converted.

*The decision:*

It was held that the relationship of banker and customer had been established by the opening of this account and the lodgment of the cheque. Readers are referred to the case of *Commissioners of Taxation v. English, Scottish and Australian Bank Limited*, case No. 9 in this chapter. In that case it was held that the word "customer" signifies a relationship in which "duration is not of the essence" and that a person whose money has been accepted by a bank on the footing that the bank undertake to honour cheques against his lodgment, is a customer of the bank within the meaning of Section 82, irrespective of whether his connection is of short or long standing.

In the case we are now considering, the judgment contains the following: "I think that the pretended Jobson was in fact a customer of the defendant's bank. It is true that it was the first transaction, but I have to look at the relationship between the parties created by the receipt of the cheque. Was he a customer of the bank when he handed the cheque to the defendant? I think he was. There must be a time when he began to be a customer and I think a person becomes a customer of a bank when he goes to the bank with money or a cheque, and asks to have an account opened in his name, and the bank accepts the money or cheque and is prepared to open an account in the name of that person.

"I think that person becomes a customer then, and after that he is entitled to be called a customer of the bank. I do not think it is necessary that he should have drawn any money, or even that he should be in a position to draw money. I think such a person becomes a customer the moment the bank receives the money or cheque, and agrees to open an account. Therefore, I think the pretended Mr. Jobson was a customer of this bank."

**(9) Banker Collecting Crossed Cheque—**

Defective title of customer—Liability of Banker—Bills of Exchange Act, Section 82.

*Commissioners of Taxation v. English, Scottish and Australian Bank Ltd.* (1920) A.C., 683.

***The Facts:***

A man who gave the name of Stewart Thallon opened an account at the head office of the abovenamed bank at Sydney on the 7th June, 1917. The accountant of the bank put him through the usual procedure by taking his name and address and procuring his signature in the signature book. Thallon gave certain well-known residential chambers in Sydney as his address. He opened the account by a lodgment of £20 in banknotes. This was received by the teller and an acknowledgment given. Thallon then took a cheque book, having the amount of stamp duty debited to his account, and he told the accountant that every cheque he signed for cash would be accompanied by an order to pay, and the accountant duly noted that in the ledger. The ledger account was opened in the ordinary way but no inquiries were made to check the authenticity of the address given. The next day, June 8th, Thallon paid in to his credit a cheque for £786/18/3 drawn on the Australian Bank of Commerce by one, A. Friend, and payable to "053 or bearer." This cheque was cleared in the ordinary manner and was duly paid by the Australian Bank of Commerce. Thallon then drew three cheques on his account, namely, £483/16/6 on the 9th June, £260/10/0 on the 11th June and £50/12/6 on the 12th June. These cheques were presented for cash by persons who presented at the same time an order signed by Thallon, to pay. When, on the grounds stated later, search was made for Thallon, he could not be found, and nothing was known of him at the address which he had given. The name which he had given was also probably an assumed one.

The cheque for £786/18/3 had been drawn by Mr. A. Friend on the 6th June, 1917, in payment of income-tax and it had been placed in an envelope addressed to the Commis-



sioners of Taxation and placed by Friend's clerk in a box which was provided for the purpose of receiving such letters in the Taxation Department. The cheque was, however, evidently stolen from there for it was never received by the Taxation Department and nothing is known or can be traced of it until it was lodged to Thallon's account on the 8th June.

When the loss of the cheque was discovered and no trace of Thallon could be found, the Commissioners of Taxation took action against the English, Scottish & Australian Bank. Judgment was given in favour of the bank in the Supreme Court of New South Wales, and this finding was affirmed when the case was carried on appeal to the Full Court. From that judgment the plaintiff Commissioners appealed to the Privy Council.

*The issues:*

The defence set up by the bank was that it had collected the cheque without negligence in the ordinary course of business, for a customer, and it relied on the provisions of Section 82 of the Bills of Exchange Act (Section 88 in New South Wales' Act). There were three issues, therefore, before the Judicial Committee of the House of Lords:—

- (1) Was Thallon a customer of the English, Scottish & Australian Bank Limited?
- (2) Did that bank collect the cheque for its customer?
- (3) Did it, in collecting the cheque, act without negligence?

*The decision:*

The Privy Council upheld the decision of the Supreme Court of New South Wales, deciding in favour of the bank. On the first issue it was found that Thallon was a customer. Their Lordships rejected the argument that one prior transaction could not make a man a customer; that there must be some continuity in a series of transactions before a man could be said to be a customer. The judgment contains the following:—



“ Their Lordships are of opinion that the word ‘customer’ signifies a relationship in which duration is not of the essence. A person whose money has been accepted by a bank, on the footing that they undertake to honour cheques up to the amount standing to his credit, is, in the view of their Lordships, a customer of the bank in the sense of the statute, irrespective of whether his connection is of short or long standing. The contrast is not between an habituè and a newcomer, but between a person for whom the bank performs a casual service, such as, for instance, cashing a cheque for a person introduced by one of their customers, and a person who has an account of his own at the bank. Thallon was, therefore, a customer, though one of short standing.”

The second question was—Did the bank collect for their customer? This was settled by Subsection (2) of Section 82, which provides that a banker receives payment of a crossed cheque for a customer within the meaning of this section, notwithstanding that he credits the customer’s account with the amount of the cheque before receiving payment thereof.

The third question which had to be decided was whether the bank had been negligent in collecting the cheque? A rather important and unusual point was raised here, for it was sought by the plaintiffs to link up all the incidents of receiving the cheque for collection on the 8th, with all the incidents of opening the account on the 7th. The learned Judges pointed out that they had not to decide a question of negligence in opening the account, but a question of negligence in collecting the cheque, although, admittedly, the circumstances connected with the opening of an account might, on occasion, shed light on the question of whether there was negligence in collecting a cheque.

Their Lordships referred to a previous case and quoted with approval the following principles:—

- (1) That the question should, in strictness, be determined separately in regard to each cheque;
- (2) That the test of negligence is whether the transaction of paying in any given cheque was sufficiently

out of the ordinary course that it ought to have aroused doubts in the bankers' minds and caused them to make inquiry.

The question involved in seeking to apply these principles is a question of fact and the Judges could see nothing in the facts of this case that enabled them to say that the bank had been negligent. There were no circumstances connected with the lodgment and collection of the cheque that were of an unusual character and therefore calculated to arouse suspicion and provoke inquiry.

In the result, therefore, the Taxation Commissioners were unsuccessful in their action against the bank.

#### **(10) Collecting Banker and Crossed Cheque—**

Collected for Customer—Action by True Owner to recover Proceeds—Inquiries made by Manager of Collecting Bank—Manager satisfied by Inquiries—Was there Negligence?

*Slingsby v. Westminster Bank Limited* (1931) 1 K.B., 173.

##### *The facts:*

A warrant in the usual printed form of the Bank of England for the payment of a half year's interest on Government War Stock was crossed generally and marked "Not Negotiable" and contained an order by an agent of the Government, addressed to the Bank of England to pay a specified sum to a named person on demand. One of the points at issue in the action was as to whether or not the instrument was a cheque and we state here now as a fact that the instrument was found by the Court to be a crossed cheque, letting in the special protection to bankers afforded by Section 82 of the Bills of Exchange Act. The cheque was payable to the order of "Mary Edith Slingsby, A/c. Harry Turner, Deceased, of Oxford Road." Mrs. Slingsby was one of the executors in the estate of Turner and she duly endorsed the cheque and sent it to the solicitors of the estate, Messrs. C. and P. One of the partners in this firm, J.C., wrongfully misappropriated this cheque and paid it to the credit of his

private account with the defendant bank. It was duly paid on presentation and the proceeds were thus made available for J.C. When the dishonest dealing was disclosed, the true owner of the cheque, Mrs. Slingsby, took proceedings against the bank to recover the amount of her cheque which had been converted by the bank. The bank pleaded the protection of Section 82 of the Bills of Exchange Act and the only point which we are concerned with in this report is the question of whether or not the bank had been negligent in collecting the cheque.

The evidence established the fact that when J.C. lodged the bank slip and this cheque, to be paid into the credit of his account, the teller referred the matter to the manager, Mr. Godwin. Godwin interviewed J.C. and said that on the face of it the transaction was an unusual one and he asked for an explanation. The customer referred to a conversation that he had had with the bank about a fortnight earlier and said that this particular lodgment had reference to the matter which was then discussed. The transaction in question involved an advance to Mrs. Slingsby. The bank manager then asked if it would not have been more desirable if Mrs. Slingsby had lodged this cheque to her own account and given her cheque in the usual way? To this J.C. replied that she had preferred to hand over the interest warrant because, to have given her own cheque, would have made it evident that she was probably receiving accommodation from her solicitors. The bank manager, having asked those questions and received those answers, was satisfied and he made a note of the interview and of J.C.'s answers on the back of the lodgment slip. The amount of the cheque was then credited to J.C.'s account and duly collected.

It was also proved that J.C. had for many years carried on with his partner P., a large and leading practice as a solicitor in the provincial town at which his banking account was kept. Up to the time when this fraud was discovered, he was generally respected and trusted. He was not the regular solicitor for the defendant bank, but he had from time to time

acted for them. He was well-known both as a prominent and trusted solicitor and also socially by Mr. Godwin, the bank manager. There was nothing in J.C.'s past record or in what was then known of his position to arouse any suspicion with regard to him at the time of the transaction in question. On the contrary, he was at that time regarded by everyone as a reliable and honourable solicitor of high standing and in a large practice.

• *The issues:*

There were several important issues involved in this action, but we are concerned with one only, and it is: Did the Westminster Bank Limited, in good faith and without negligence, receive payment of the amount of this cheque for a customer?

*The decision:*

It was held that in the circumstances the bank had done all that could reasonably be expected of it, that there was no negligence and that the plaintiff was not entitled to recover. The judgment of Finlay, J. contains the following:—

“ Upon the whole, I think it is established that the bank officials were not guilty of any negligence. It cannot be expected, as was said in one of the cases, that bank officials should be amateur detectives. Mr. Godwin considered that the matter called for inquiry and I think he would have been negligent if he had not; but the answers he received appeared to harmonise perfectly with the information he had previously received. It is obvious that this plot was carefully constructed and carried out by Mr. C. It would not, in my opinion, be right to hold that it was negligent to believe a statement made by a man then in the highest repute, consistent with the information Mr. Godwin was already in possession of, and not on its face improper.

“ Upon the whole, therefore, I hold that the bank are entitled to rely on Section 82, because their officials acted in good faith and without negligence, and there must be judgment for the defendant bank.”

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**(11) Action against Bank for Conversion—**

True Owner of Cheque—Cheque Payable to Company misappropriated by Director—Cheque paid into Private Account of Director.

*Francis & Taylor Limited v. The Commercial Bank of Australia Limited* (1932), N.Z.L.R., 1028.

The principle of the case *Slingsby v. Westminster Bank Ltd.*, referred to above, was applied in this case.

*The facts:*

The plaintiff, Francis & Taylor Ltd., had business dealings with a certain finance corporation, in the course of which the corporation drew a cheque payable to Francis & Taylor Ltd. The cheque was made payable to the order of that company and it was marked "Not negotiable," and in this form it was handed to one "F," who was a director of the company. "F" endorsed the cheque on behalf of the company and misappropriated it by paying it into his private account with the defendant bank.

The evidence, given on behalf of the bank, was to the effect that when the cheque was so lodged by "F" for credit of his account the accountant of the bank rang up the office of Francis & Taylor Limited to make inquiries, but was told that the directors were absent. The accountant claimed in his evidence that he had got what he considered a satisfactory explanation from the secretary of the company concerning the lodgment of the cheque by "F" to his own account. No further inquiries were made by the bank.

*The issue:*

Did the action of the bank in this matter entitle it to the protection of Section 82 of the Bills of Exchange Act as a collecting banker that in good faith and without negligence had acted in the collection of the cheque?

*The decision:*

It was held (1) That the cheque had come into the possession of and had become the property of Francis & Taylor Limited and that it was converted by the bank.

(2) That the bank was liable unless it could prove that it had acted in good faith and without negligence so as to entitle it to the protection of Section 82 of "The Bills of Exchange Act, 1908."

(3) That the Bank was put on inquiry by the circumstances and that reasonable inquiry had not been made and that the bank had therefore not discharged the onus of showing absence of negligence on its part.

• Judgment was given for the plaintiff company.

**(12) Liability of Collecting Bank on Action for Conversion—**

Crossed Cheques stolen by Clerk of True Owner—Lodgment made at one Branch of Bank and Deposit Slip transmitted to another Branch at which the Customer's Account is kept—Protection of Section 82 of Bills of Exchange Act.

*Savoury & Company v. Lloyds Bank Limited* (1932), 2 K.B., 122.

*The facts:*

Perkins and Smith were clerks of a firm of sharebrokers, doing business on the London Stock Exchange. Perkins had opened an account in his own name with Lloyds Bank Limited at the Wallington branch. Smith had opened an account in his wife's name with Lloyds Bank Limited, first at the Red Hill branch and later at the Weybridge branch.

When Perkins opened his account at the Wallington branch, the bank officials there knew that he was a stockbroker's clerk but they did not know and did not ask the name of his employers. When Mrs. Smith opened her account at the Red Hill branch and later at the Weybridge branch, she was not asked and the officials of the banks did not know what her husband's occupation was.

Perkins and Smith acted fraudulently towards their employers and over a considerable period they stole cheques from their employers and paid them into the respective private banking accounts of Perkins and Mrs. Smith. Some of these cheques were the cheques of third parties, payable

to the employers of Perkins and Smith. In other cases they were cheques drawn by the employers and payable, in accordance with the ordinary custom, to customers of the firm or to bearer. For convenience, Perkins and Smith had taken advantage of a system which Lloyds Bank Limited had put into operation which enabled them to make the actual lodgments of the cheques at the London office of the bank for transmission to the branch banks where the accounts were actually kept. The London office accepted the lodgment slip which detailed a description of the cheques paid in and in the ordinary way passed those cheques through the Exchanges for collection, but it sent the lodgment slip on to the branch banks, at which the accounts of Perkins and Mrs. Smith respectively were kept.

When the fraud was discovered, the employers, the true owners of the cheques in question, brought an action for conversion against Lloyds Bank Limited, alleging that they had, to the detriment of the plaintiffs as true owners of the cheques, assisted in the conversion of these cheques. The bank pleaded the protection afforded by Section 82 of the Bills of Exchange Act. The matter came first before a single Judge, who gave judgment for the defendant bank—he held that as the system of allowing cheques to be paid into one branch of the bank to be credited to a customer's account at another branch had worked without difficulty and without any untoward results for 40 years, the defendants could not be said to have been negligent in not having passed on to the managers at the customers' branches of the bank a detailed description of the cheques paid in. The learned Judge therefore held that the bank was protected by Section 82. The plaintiffs appealed and the judgment we are now considering is that of the Court of Appeal.

*The issues:*

- (1) Did Lloyds Bank Limited collect the cheques in question for its customers?
- (2) Could Lloyds Bank Limited be said to have acted, in the collection of these cheques, in good faith and without negligence?



*The decision:*

The judgment is an informative one because the learned judges went to considerable pains to make clear, firstly, to whom the bank owes a duty in such a connection; secondly, what the dangers are that the bank must guard against, and thirdly, what is a reasonable standard to set up whereby to measure the bank's duty to the true owner of the cheque, and to test the actions of the bank, for negligence.

It was held, firstly, that the duty was to the true owner of the cheque and that negligence would mean the want of reasonable care in reference to the interests of the true owner, the principal, whose authority the customer purports to have. As to the danger illustrated by the facts of this case, it was undisputed that it was one that should be present to the mind of a banker who acts as a collecting banker; it is the danger that an employee of a firm might (a) Intercept and misappropriate cheques paid by third parties to his employers, or, (b) Intercept and misappropriate cheques drawn by his employers for the purpose of being forwarded or handed to the employers' clients.

The judgment makes it clear that in view of these dangers, an obligation lies on a banker to know his customer and if on the facts of any given case the banker should know that his customer is an employee, he should know also who his employer is and what is the nature of his business.

When the banker has this knowledge, and cheques are then lodged by the customer for credit of his account, and a cursory examination of the cheques reveals either that the cheques are drawn by third parties and payable to the employer, or are drawn by the employer and paid to third parties, a duty of further inquiry is obviously thrown on the banker.

It is quite clear from this present judgment that if the cheques in question had been lodged by Perkins or Mrs. Smith personally, at the actual branch of the bank at which their accounts were kept, the collecting banker must have been deemed to know that Perkins and Mrs. Smith's husband were employees of a particular stockbroking firm and they must



have been receptive of all warnings and suggestions reasonably arising out of the names appearing on the cheques as drawers and payees respectively.

In the actual facts of this case, however, the bankers' custom of accepting the actual lodgment in London and transmitting the lodgment slip without the cheque to the branch, had increased the dangers by dividing up the knowledge. The London office that actually accepted the cheque over the counter had none of the information that a bank should have and record on the opening of an account. The branch bank, to which the lodgment slip was remitted, and which presumably had a record of information about its customer, did not see and therefore had no chance to examine the actual cheques that were paid in.

The Court was of opinion that the difficulties and dangers in this system were so apparent that it was no answer that it had persisted for over 40 years without trouble or loss. One of the judges quoted with approval the epigrammatic statement of another judge that "Neglect of duty does not cease, by repetition, to be neglect of duty." It was therefore held that the bank had not discharged the burden of proving that it dealt with the cheques without negligence; that its branch managers had not made sufficient inquiries in opening the two customers' accounts, and that the London office receiving the cheques had not passed on sufficient information to the customers' branch, as it could easily have done.

It will be interesting to bankers to note that during the hearing of this case on appeal, the bank's own regulations and circulars, addressed to its officers, were brought under the notice of the Court and they undoubtedly assisted in the finding of the Court. The acts complained of stood clearly condemned by the bank's own regulations. Rule 39, for instance, began "No new current account should be opened without full knowledge of or full inquiry into the circumstances and character of a customer." On this one of the judges commented:—

“ If the bank knows the customer is a clerk, it seems the natural reasonable result that it should ascertain ‘ whose clerk?’ ” It would then know of a relation in which there is a risk of a clerk dealing with his employer’s cheques, where his employer is drawer or payee. Rule 36 of the bank’s regulations require every member of the staff to be alert in dealing with cases of possible misappropriation of a cheque payable to an employer, and, in a circular calling the attention of the staff to this regulation, the directors had said, ‘ There have been repeated and emphatic warnings to managers and cashiers about the necessity of observing this rule as closely as possible. Despite those warnings the directors view with concern the losses which the bank still suffers from time to time through the non-observance or faulty application of Rule 36. Every member of the staff should be alert in dealing with the following cases . . . . . That which comes into an account calls for as much careful scrutiny as that which goes out, and cashiers should never hesitate to refer to their managers any articles which might put the bank upon inquiry.’ As a statement of the information that should have put the bank on inquiry in this case, one of the judgments contains the following: ‘ The nature of the account, however, seems to me suspicious. Perkins they knew to be a stockbroker’s clerk. Into his account there was paid, once, twice, or thrice a month, sums considerable for the size of the account, but varying in amount, amounting in a year to over £1,000.’ ”

The decision of the Court of Appeal was therefore that the bank had been negligent and was liable accordingly to the plaintiffs.

**(13) Banker and Customer—Misapplication of Trust Funds—**

Stockbroker paying into Credit of his Own Account—  
Money of Clients.

*J. R. Thomson and Others (Trustees) v. Clydesdale Bank Limited* (1893), A.C., page 282.

*The facts:—*

The appellants were trustees who held a parcel of shares and were desirous of selling them. They handed them to a

stockbroker for sale and instructed him to pay the proceeds into a certain specified account. The stockbroker instead, paid the proceeds into his own overdrawn bank account with the Clydesdale Bank Limited. The bank knew that this customer was a stockbroker and he was so described in the heading of his account. When the misapplication of the funds was discovered, the trustees brought action against the bank to recover from the bank the amount thus dealt with. The bank resisted the claim.

*The issues:*

- (1) Did the bank know from facts in its possession that this money was being misapplied by its customer?
- (2) Was it a reasonable inference from facts within the knowledge of the bank that the bank knew or should have known that this money was being wrongfully used in violation of the stockbroker's duty?

*The decision:*

It was held that under the circumstances of this case the bank was not liable to the appellants. In the course of his judgment, Lord Shand said: "I am of opinion that the same principle which applies to third parties generally is equally applicable to the case of dealings between stockbrokers and their bankers, and that the only circumstances in which money misapplied by a broker in payment of a debt to him can be recovered from the banker by the principal to whom the money belonged, is where it can be shown directly, or by inference from the facts proved, that the banker or his representative in the transaction knew that the money was being misapplied. It has been shown in the present case, and indeed it is notorious, that a stockbroker is often in advance for his customers, and that on settlement days and at other times he may require temporary advances, which will in due course be repaid shortly afterwards, when the broker receives payment of the prices of stocks sold and delivered by him. Accordingly the knowledge of the banker that money paid in by which a broker reduces or extinguishes an overdraft on his account consists of the prices received for customers' stocks.

delivered, or of the price of stock belonging to a particular customer, is nothing more than knowledge of what is constantly occurring in the ordinary course of business. The broker may or may not owe the price to his principal. In the general case he does, but in others he may have already advanced the amount; or his principal and he may have had other stock transactions which leave a balance in the broker's favour; or the arrangement between the parties may be that the broker is to retain the fund for an interval of more or less time for the purpose of reinvestment or otherwise. It would be impossible that such business could be carried on if it were held to be obligatory on a banker, in order to save himself from the consequences of a possible breach of duty or obligation, or of the fraud of an agent to his principal, that the banker should examine into the particulars of the various transactions resulting in the payments by brokers or agents to the credit of their accounts, on each occasion on which such payments are made. The only rule that can be applied in practice, and which, as I think, rests on sound principle, is that liability for repayment of funds which can be traced or followed into the banker's hands, and which have been applied in payment of the agent's debt, shall arise only where it can be shown that there was knowledge, on the banker's part, not merely that the fund was received from the broker's principal, but knowledge also that the payment was a misapplication of the fund, made in violation of the agent's duty and obligation."

**(14) Bills of Exchange Act—**

Cheque issued to Payee and payment received by him  
—Action for Recovery on ground of Mistake of Fact—Is  
Original Payee a Holder in Due Course?

*R. E. Jones Limited v. Waring and Gillow Limited* (1926)  
A.C., 670.

*The facts:*

A dishonest man named Bodenham was responsible for a transaction which set two quite honest English firms at

variance and caused them to embark on litigation concerning a sum of £5,000. The question was, in effect, which of two innocent parties should lose that sum and the case was heard first in the King's Bench Division. The judgment given therein was reversed in the Court of Appeal but finally restored on an appeal to the House of Lords by a bare majority decision of five judges. The only good that comes out of the matter is that a difficult question of interpretation of the Bills of Exchange Act on which there existed directly conflicting judgments has been authoritatively settled.

Bodenham had acquired a most expensive equipment of furniture and house fittings from Waring and Gillow Ltd., under a scheme of instalment payments, and he was in arrears with his payments. The company, after threatening to do so, seized the furniture and Bodenham waited on them and told them that he had a large sum of money coming with which he would be able to meet their claim, and he persuaded them to put the furniture aside and hold it for him, in the meantime. He then took a trip to the West of England, after having procured some expensive and imposing looking business stationery and "literature," and he called on the firm of R. E. Jones Limited, representing that he was an English agent of a new and expensive Continental motor car and he offered to Jones Limited the West of England agency. His printed matter and testimonials seemed to be beyond question and, after a couple of days spent in negotiation, he made a definite offer which the intended agents accepted. The terms of the agency required them to order a certain number of cars in the first year, but, in addition, they were to pay a deposit of £5,000 at once. The directors of Jones Limited had no doubts about Bodenham, who seems to have been most plausible; but they pointed out, as an ordinary business precaution, that it would be a rather extraordinary transaction that after a couple of days' negotiation with a man whom they had never met before they should hand over to him a cheque for £5,000. Bodenham acquiesced in this as a quite reasonable submission, and he then informed them that

Waring and Gillow Ltd. were standing behind the project, and financing it in England, and he suggested that a cheque should be issued and made payable to the order of Waring and Gillow Ltd. As this company was well and favourably known to Jones Limited, the suggestion settled all their fears and doubts and they issued, firstly, two cheques for £2,000 and £3,000 respectively and later one cheque for £5,000 in substitution for these cheques. This substitution was made at the request of Jones and Company Limited, after communication between the two companies in which the precise nature of the transaction (as each side believed it to be) was never discussed or disclosed. Jones Limited believed that they were paying a deposit to Waring and Gillow Limited to secure the agency for a Continental motor car. Waring and Gillow Limited believed that they were receiving a cheque representing an amount which Jones Limited owed to Bodenham. The new make of motor car had no existence, except on paper, and the fraud was quickly discovered and the inevitable litigation followed.

*The issues:*

There were several issues before the House of Lords, whose judgment we propose to examine, but we are concerned with one of them only. It was principally on the interesting question of an estoppel that the judges were divided—two of them holding that Jones Limited was estopped from recovering the proceeds from Waring and Gillow, while three judges took the contrary view.

On the issue which we propose now to consider and place before our readers, the judges were unanimous. That issue is: Was Waring and Gillow Limited, the original payee of this cheque, to whom it was issued, a "holder in due course"? In *Lloyds Bank v. Cooke* (1907), 1 K.B., 794, Mr. Justice Fletcher Moulton, in 1907, held that the term "holder in due course" included a payee. In *Lewis v. Clay* (14 T.L.R., 149, in 1897), Lord Russell of Killowen had held that the expression "holder in due course" did not include a payee.

*The decision:*

All the judges agreed with the ruling of Lord Russell of Killowen in *Lewis v. Clay* as a correct exposition of the law, and held that the contrary finding of Fletcher Moulton, L.J., in *Lloyds Bank v. Cooke*, was not sound and was not to be followed.

It is pointed out that a Bill of Exchange has two phases. Firstly, "issue," see Section 2; and secondly, "negotiation," see Section 31. "Issue" is defined as meaning the first delivery of a bill—complete in form, to a person who takes it as a holder. It is only after it has, by issue, i.e., delivery from one person to another, got into the hands of the payee, that it can be "negotiated;" and a "holder in due course" is defined as a person to whom the bill has been "negotiated." Until it has been issued it is not a Bill of Exchange, and nobody has, in relation to it, anything to transfer.

Lord Carson, in his judgment, said: "The one difficulty that I felt in the course of the argument was as to the effect of the provisions of 'The Bills of Exchange Act, 1882,' and as to whether Mr. Jowitt might not be right in his contention that if the respondents had brought an action against the appellants upon the cheque for £5,000, they would be entitled to rely upon the fact that they were 'holders in due course' of the said cheque, having regard to the provisions of Section 21, Subsection 2, of 'The Bills of Exchange Act, 1882.' I am, however, now convinced, and in that I agree with the noble Viscount on the Woolsack, that the term 'holder in due course' cannot be held to include the original payee of the cheque, and for the reasons stated by the noble Viscount I further agree with him that the decision of Lord Russell in *Lewis v. Clay* upon this point was right, and is to be preferred to the contrary opinion expressed by Fletcher Moulton, L.J., in *Lloyds Bank v. Cooke*. In my opinion, having come to these conclusions, in the absence of any other defence the appellants are entitled to succeed in the action."



**(15) Customer's Duty to Banker in Drawing Cheque.**

Space for "Amount in Words" left Blank—Alteration of Amount in Figures—Was the Customer negligent? Liability for fraud intervening between signature and presentation.

*Macmillan and Another v. London Joint Stock Bank Limited* (1918) A.C., 777.

*The facts:*

The plaintiffs were a business firm and they had in their service a confidential clerk whose integrity, from some years of experience with him, they had every reason to rely on. It fell within the ordinary round of the duties of this clerk to fill in cheques and present them to the partners for signature. The cheque in question was so filled in, and was taken by a clerk K—to one of the partners just as that partner was about to leave the office for his lunch at midday. The clerk stated that the cheque was drawn for an amount to replenish the petty cash. The space provided for writing in the amount in words was blank, whilst the space for writing in the amount in figures appeared thus:—"£ 2 . 0 . 0," there being room on each side of the figure "2" for the interpolation of other figures. The partner who was approached signed the cheque without question other than one as to why the petty cash cheque was for £2 instead of the usual £3. The clerk then took it to his room and, in the space provided for words, he wrote "One hundred and twenty pounds," whilst he altered the space provided for the figures by inserting a "1" before the "2" and a "0" after it, thus making the figures agree with the written amount of £120. The cheque was presented to the bank and duly paid. It was an open cheque, payable to "Ourselves or bearer."

When the fraud was discovered the customers objected to the amount being debited to their account. The bank, on the other hand, held that it had paid a cheque, genuinely signed, for £120, in a form that excited no suspicion, and was therefore entitled to debit the amount to the customers' account. The customers then sued the bank and, firstly in the King's Bench Division, and, secondly in the Court of



Appeal, it was held that the bank's act in paying the cheque as presented was traceable, not to any negligence in drawing the cheque, but to an intervening fraud which the customer was not bound to anticipate. Judgment was accordingly given on each hearing in favour of the customer. From these findings the bank appealed to the House of Lords, and we now consider the judgment of that final tribunal.

*The issues:*

In the relationship between bank and customer what are the respective obligations as to the drawing of cheques by the customer and the paying of cheques by the bank? If the customer is liable for the results of any negligence on his part in drawing a cheque, is it a proper inference in this case

(a) that the customer was guilty of negligence, and

(b) that the misleading of the bank was attributable to that negligence?

At what point of time do the respective obligations of banker and customer meet? Or in other words, on which party lies the responsibility for what may happen between the drawing of the cheque and its presentation to the banker?

*The decision:*

It was held that the customer of a bank owes a duty to the bank in drawing a cheque to take reasonable and ordinary precautions against fraud, and if, as the natural and direct result of the neglect of those precautions the amount of the cheque is increased by fraud, the customer must bear the loss as between himself and the bank. It was further held in this case that the customer had been guilty of neglect of this duty; and that the alteration in the amount of the cheque in this case was the direct result of that breach of duty, and that the bank was entitled to debit the firm's account with the sum of £120.

Lord Findlay, L.C., in the course of a luminous judgment said "The question whether there was negligence as between banker and customer is a question of fact in each particular case and can be decided only on a view of the cheque as issued by the drawer and with the help of any evidence

available as to the course of dealings between the parties or otherwise. If the existence in a cheque of blank spaces of an unusual nature and such as to facilitate interpolation is declared to be no evidence of a breach of duty as between customer and banker, the duty would have little left to operate upon. To recognise the duty of care by the customer in drawing cheques and then to lay down as a matter of law that there is no breach of that duty by leaving such blank spaces in the cheque is in effect to eviscerate the duty." . . . . . "If *Young v. Grote* is right, the judgment now appealed against is wrong. In my opinion, the decision in *Young v. Grote* is sound in principle and supported by a great preponderance of authority, and must be treated as good law . . . . .

"In the present case the customer neglected all precautions. He signed the cheque, leaving entirely blank the space where the amount should have been stated in words, and where it should have been stated in figures there was only the figure '2' with blank spaces on either side of it. In my judgment there was a clear breach of the duty which the customer owed to the banker. It is true that the customer implicitly trusted the clerk to whom he handed the document in this state to fill it up and to collect the amount, but his confidence in the clerk cannot excuse his neglect of his duty to the bank to use ordinary care as to manner in which the cheque was drawn. He owes that duty to the banker as regards the cheque, and it is no excuse for neglecting it that he had absolute and, as it turned out, unfounded confidence in the clerk. The duty is not a duty to have clerks whom the customer believes to be honest. It is a specific duty as to the preparation of the order upon the banker. If the customer chooses to dispense with ordinary precautions because he has complete faith in his clerk's honesty, he cannot claim to throw upon the banker the loss which results. No one can be certain of preventing forgery, but it is a very simple thing in drawing a cheque to take reasonable and ordinary precautions against forgery. If owing to the neglect of such precautions it is put into the power of any dishonest person to increase the amount

by forgery, the customer must bear the loss as between himself and the banker."

A useful passage from the judgment of Lord Shaw of Dunfermline may also be quoted with advantage. He pointed out firstly that the respective obligations of the parties are as follows:—(a) That the banker is bound under the contract of mandate which exists between him and his customer to pay the customer's cheque if there are funds to meet it, and if the instrument does not contain on its face any reasonable occasion for suspicion as to the wording and figuring of its contents; (b) that the customer's cheque must be unambiguous and *ex facie* in such a condition as not to arouse any reasonable suspicion; and to ensure this the customer must take care to frame and fill up the cheque in such manner that when it passes out of his hands it is not in any such form as to facilitate alterations or interpolations. His Lordship then proceeded, "It appears to me that a crucial consideration in a case such as the present is this, namely, what is the point of time at which these respective obligations meet? The point of time is the presentation of the cheque. Not until that moment is the banker confronted with any mandate or order, and in my opinion the responsibility for the cheque and all that has happened to it between its signature and its presentation is not, and ought not to be, laid upon the banker."

Judgment was therefore finally entered in favour of the bank.

#### (16) The Rule in Clayton's Case.

Appropriation of Payments in a Current Account—In What Order are Debits set against Credits?

*Devaynes and Ors. v. Noble; Baring and Ors. v. Noble and Ors.*, 1 Mer. 530.

(Editors' Note: This case was decided in the year 1816 and the portion of it to which we propose to devote attention enunciates a well-known and well-established rule known as "The Rule in Clayton's Case.")

The plaintiffs were a number of creditors of a bankrupt private banking house, and the claims were all heard together,

the plaintiffs being divided into various classes and a typical debt out of each class being taken as a test case. In one of the groups of creditors Clayton was selected as the test case, and the rule applied to settle the claims of the creditors in that group therefore became known as the "rule in Clayton's case." There were two groups of defendants, namely, the partners in the firm at a point of time immediately prior to the death of a partner, and those who were in the firm at the time of the bankruptcy).

*The facts:*

The defendants were a private banking partnership. Some years before the hearing of the case a partner, Devaynes, had died, and later the firm became bankrupt. The equities of the various classes of customers were dealt with in the Court of Chancery. As indicated above, we are concerned with that part of the decision that relates to a class of creditors represented by one Clayton, and the rule that was enunciated in relation to this part of the proceedings.

At the date of Devaynes's death, Clayton had a balance in the bank's books of £1,713. Between the death of Devaynes and the bankruptcy of the firm, the payments made to Clayton by the surviving partners exceeded the balance of £1,713 which was in the bank's books at the time that Devaynes died. In the same period the lodgments by Clayton largely exceeded the sums withdrawn by him and the balance of his account at the time of the bankruptcy of the firm exceeded the £1,713 due at Devaynes's death. In effect Clayton claimed that the sums he drew out after Devaynes's death were the sums that he had paid in after that event and he therefore claimed to be able to prove against Devaynes's estate for the greater part of the balance of £1,713 due to him at the time of the death of Devaynes. He had made no particular appropriation of the amounts paid in at the time he paid them in.

*The issues:*

In a current account consisting of an unbroken series of credits on one side and debits on the other side, and in respect of which no particular appropriation is made by the customer at the time, in what order are the debits to be set against the credits?

*The decision:*

It was held that the sums drawn out are, in the absence of any stipulation to the contrary, to be deemed to be drawings out, firstly, of the first sums paid in, the first debits going against the first credits and so on. The Lord Chancellor in his judgment said, "This is the case of a bank account where all the sums paid in form one blended fund, the parts of which have no longer any distinct existence. Neither banker nor customer ever thinks of saying . . . 'in such a case this draft is to be placed to the account of the £500 paid in on Monday and this other to the account of the £500 paid in on Tuesday.' There is a fund of £1,000 to draw upon and that is enough. In such a case there is no room for any other appropriation than that which arises from the order in which all receipts and payments take place and are carried into the account. Presumably it is the sum first paid in that is first drawn out. It is the first item on the debit side of the account that is discharged or reduced by the first item on the credit side. The appropriation is made by the very act of setting the two items against each other. Upon that principle, all accounts current are settled and particularly cash accounts. When there has been a continuation of dealings, in what way can it be ascertained whether a specific balance due on a given day has or has not been discharged, but by examining whether payment of the amount of that balance appears by the account to have been made. You are not to take the account backwards and strike a balance at the head instead of the foot of it. A man's banker breaks, owing him on the whole account a balance of £1,000. It would surprise one to hear the customer say 'I have been fortunate enough to draw out all that I paid in during the last four years and there is £1,000 which I paid in five years ago that I hold myself never to have drawn out, and therefore if I can find anybody who was answerable for the debts of the bankinghouse such as they stood five years ago, I have a right to say that it is that specific sum which is still due to me and not the £1,000 that I paid in last week.' This is exactly the nature of the present claim."

## APPENDIX.

24 GEO. V.] *Reserve Bank of New Zealand* [1933, No. 11.]New Zealand.

## ANALYSIS.

- Titls.  
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2. Interpretation.

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ESTABLISHMENT AND FUNCTIONS OF THE  
RESERVE BANK OF NEW ZEALAND.

3. Provision for establishment of Reserve Bank.
4. Contracts of Reserve Bank.
5. Rules of Reserve Bank.
6. Capital of Reserve Bank.
7. Bank to come into existence when capital subscribed.
8. Increase of capital.
9. Commencement of business.
10. £1,000,000 to be paid into Bank's General Reserve Fund.
11. Moneys payable to Bank by Minister may be paid in cash or Government securities.

*Business of the Reserve Bank.*

12. General object and purposes of Reserve Bank.
13. Particular powers of Reserve Bank.
14. Restrictions upon the conduct of business by the Bank.

*Issue of Bank-notes by Reserve Bank.*

15. Issue of bank - notes by Reserve Bank.
16. Provisions for conversion of Reserve Bank notes.
17. Bank to maintain reserves in accordance with this section.
18. Provisions as to maintenance of reserve may be suspended.

19. Bank to increase minimum discount rate if reserve falls below the prescribed requirements.
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*New Zealand Government Accounts to be kept with Reserve Bank.*

21. Public Account and other Government accounts to be kept at Reserve Bank.
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## MANAGEMENT OF THE RESERVE BANK.

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24. Qualifications of Governor and Deputy Governor of Bank.
25. Appointment or election of Governor and Deputy Governor.
26. Remuneration of Governor and Deputy Governor.
27. Duties of Governor and Deputy Governor.
28. Three members of Board to be appointed as State directors.
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30. Casual vacancies in office of shareholders' directors.
31. Directors of Reserve Bank not to act as directors of any other bank.
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*Executive Committee of Board of Directors.*

34. Constitution and functions of executive committee.

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## LIQUIDATION.

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 43. Compulsory liquidation.  
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## PART V.

## OBLIGATIONS OF OTHER BANKS IN RELATION TO RESERVE BANK.

*Banks to maintain Balances with Reserve Bank.*

45. Other banks to maintain deposits with Reserve Bank in accordance with this section.

*Monthly Returns.*

46. Banks carrying on business in New Zealand to furnish monthly returns to Reserve Bank.

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## MISCELLANEOUS.

47. General meetings and voting rights of shareholders.  
 48. Provision for voting by proxy.  
 49. Recovery of fines imposed by this Act.  
 50. Trustees may subscribe for or purchase shares of Reserve Bank.  
 51. This Act to prevail over Banking Acts in event of conflict.  
 52. General exemption from taxation. Schedules.

## 1933, No. 11.

Title. AN ACT to provide for the Establishment in New Zealand of a Bank to be called the Reserve Bank of New Zealand, to define its Powers, Functions, and Duties, and to make such Consequential Amendments of the Law relating to Banking as may be necessary or advisable in view of the Establishment of the Reserve Bank.

[27th November, 1933.]

Short Title. 1. This Act may be cited as the Reserve Bank of New Zealand Act, 1933.

Interpretation.

2. In this Act, unless the context otherwise requires,—  
 "Bank," when used otherwise than with reference to the Reserve Bank, has the same meaning as in the Banking Act, 1908:  
 "Bank-note" or "note" has the same meaning as in the Banking Act, 1908:  
 "Board of Directors" or "Board" means the Board of Directors of the Reserve Bank:  
 "Demand liabilities" in relation to any bank means all liabilities of that bank which, when such liabilities are created, are made payable within thirty days or are made subject to less than thirty days' notice before payment:



"Reserve balance" in relation to any bank means the balance for the time being maintained by that bank in the Reserve Bank:

"Reserve Bank" or "the Bank" means the Reserve Bank of New Zealand established under this Act:

"Sterling" means moneys that for the time being are legal tender in the United Kingdom:

"Time liabilities" in relation to any bank means the liabilities of that bank which, when such liabilities are created, are made payable after thirty days or are made subject to not less than thirty days' notice before payment.

#### PART I.

#### ESTABLISHMENT AND FUNCTIONS OF THE RESERVE BANK OF NEW ZEALAND.

3. (1) There shall be established in New Zealand in accordance with this Act a bank to be called the Reserve Bank of New Zealand, which shall be a body corporate limited by shares in accordance with this Act. Provision for  
establish-  
ment of  
Reserve  
Bank.

(2) The Bank shall have its Head Office in the City of Wellington, in the Dominion of New Zealand, and may establish such branches and agencies and appoint such agents in New Zealand as in its discretion it thinks fit, and may also, if it thinks fit, appoint agents elsewhere than in New Zealand.

(3) The general conduct of the business of the Bank shall be entrusted to a Board of Directors constituted in accordance with the provisions of Part II of this Act.

4. (1) Any contract which, if made between private persons, must be by deed shall, when made by the Bank, be in writing under the common seal of the Bank. Contracts of  
Reserve  
Bank.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith, may, when made by the Bank, be in writing signed by any person acting on behalf of and under the express or implied authority of the Bank.

(3) Any contract which, if made between private persons, may be made verbally without writing, may, when made by the Bank, be made verbally without writing by any person acting on behalf of and under the express or implied authority of the Bank.

5. (1) Unless and until altered in accordance with the provisions of the next succeeding subsection, the rules set Rules of  
Reserve  
Bank.



out in the First Schedule hereto shall be the rules of the Reserve Bank, and shall be observed by the Bank in the conduct of its affairs.

(2) The Board may from time to time, with the approval of the Governor-General in Council and with the concurrence of the shareholders expressed at a general meeting of shareholders, but not otherwise, amend any of the rules in the First Schedule hereto or make such additional rules in relation to the conduct of the affairs of the Reserve Bank as it thinks fit:

Provided that the authority conferred by this subsection to amend the rules or to make additional rules shall not be exercised so as to conflict with any of the provisions of this Act contained elsewhere than in the said First Schedule.

Capital of  
Reserve  
Bank.

6. (1) The original capital of the Reserve Bank shall be five hundred thousand pounds, in shares of five pounds each, which shall be offered by the Minister of Finance at par for public subscription in New Zealand, and shall be allotted by him in such manner as he may in his discretion determine to British subjects who are ordinarily resident in New Zealand or who, having been so resident, may at the time of allotment be temporarily out of New Zealand for the purposes of their business or for other sufficient reason:

Provided that not more than five hundred shares shall be allotted to any one person, whether in his own right or on behalf of any other person or persons.

(2) The sum of one pound, or such greater amount as the Minister of Finance may determine, shall be payable on application for every share, and the Balance shall be paid in one or more instalments within such period thereafter, not exceeding twelve months, as may be fixed by the said Minister in that behalf.

(3) The liability of every shareholder shall be limited to the amount (if any) for the time being unpaid on the shares held by him.

(4) In the event of any of the shares not being subscribed for by the public within three months after the date of offer, the Minister of Finance shall subscribe for such shares, but shall again offer them for subscription by the public at par, as soon as, in the opinion of the Board of Directors, it is desirable so to do, having regard to the prevailing financial and other relevant conditions.

(5) Notwithstanding anything in the last preceding subsection, the Minister of Finance may subscribe for any shares

in the Reserve Bank at any time before the expiration of the period of three months therein referred to. All shares subscribed for by the Minister in accordance with this subsection shall be disposed of by him in accordance with the last preceding subsection.

(6) The Minister of Finance shall not be entitled to vote at any meeting of the shareholders of the Bank by virtue of his being the holder of any shares pursuant to this section.

7. After the full amount of the capital of the Reserve Bank has been subscribed, the Minister of Finance shall give public notice of the fact of such subscription in the *Gazette* and in such other manner as he thinks fit, and on a date to be specified by the Minister by such notice in the *Gazette* the shareholders of the Reserve Bank shall become a body corporate, with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

Bank to come into existence when capital subscribed.

8. Subject to the approval of the Minister of Finance, the capital of the Bank may from time to time be increased pursuant to a resolution passed at a general meeting of shareholders.

Increase of capital.

9. (1) The Reserve Bank shall be entitled to commence business on, but not before, the date on which it becomes entitled, pursuant to section fifteen of this Act, to the right to issue bank-notes in New Zealand.

Commencement of business.

(2) Nothing herein shall be construed to prohibit or restrict the Bank from entering into contracts or doing any other act or thing that may be necessary or advisable to enable it effectively to commence its business on the date referred to in the last preceding subsection.

10. (1) On or before the date on which the Bank becomes entitled to commence business as provided in the last preceding section, the Minister of Finance shall, subject to the provisions of the next succeeding subsection, pay into the General Reserve Fund of the Bank the sum of one million pounds, which shall not be recoverable except in the event of the winding-up of the Bank.

£1,000,000 to be paid into Bank's General Reserve Fund.

(2) If, on the date of such payment to the General Reserve Fund, the Minister of Finance is the holder of any shares of the Reserve Bank in accordance with the provisions of section six hereof, the amount then payable into the General

Reserve Fund shall be reduced by the par value of the shares so held.

(3) On the subsequent sale of the said shares to the public pursuant to the said section six, the net proceeds of such sale shall, without further authority or appropriation than this section, be paid by the Minister into the General Reserve Fund of the Bank.

Moneys payable to Bank by Minister may be paid in cash or Government securities.

11. Any payments required to be made to the Reserve Bank by the Minister of Finance under any of the foregoing provisions of this Act may be made without further authority than this section out of any balances in the Public Account, and shall be regarded as investments, without interest, of such balances made under section thirty-nine of the Public Revenues Act, 1926, or the Minister may, in his discretion, meet such payments wholly or in part by delivery to the Bank of Government securities of a face value equivalent to the amount of such payments and bearing interest at the then current nominal rate offered for new issues in New Zealand of Government securities. The Minister is hereby empowered to create and issue Government securities, for the purposes contemplated by this section, under and subject to the provisions of the New Zealand Loans Act, 1932.

#### *Business of the Reserve Bank.*

General object and purposes of Reserve Bank.

12. It shall be the primary duty of the Reserve Bank to exercise control, within the limits of the powers conferred on it by this Act, over monetary circulation and credit in New Zealand, to the end that the economic welfare of the Dominion may be promoted and maintained.

Particular powers of Reserve Bank.

13. (1) As from the date on which the Reserve Bank is entitled to commence business, as provided in section nine hereof, it shall be lawful for the Bank to do all or any of the following things, namely:—

(a) Make and issue bank-notes in accordance with the provisions of this Act:

Provided that the Bank shall not issue any such bank-notes unless the form, denomination, design, and material thereof have been approved by the Minister of Finance:

(b) Buy and sell gold and silver coin or bullion:

(c) Accept money on deposit or on current account:

(d) Discount, rediscount, buy, and sell bills of exchange, promissory notes, and other documents arising out of *bona fide* commercial transactions, bearing two

or more good signatures and maturing within one hundred and twenty days after the date of their acquisition by the Bank:

- (e) Discount, rediscount, buy, and sell bills of exchange, promissory notes, and other documents arising out of *bona fide* transactions in relation to the production, marketing, and sale of live-stock and primary products (hereinafter in this Act referred to as agricultural bills) bearing two or more good signatures and maturing within six months after the date of their acquisition by the Bank:

Provided that the total value of agricultural bills held by the Bank at any one time shall not exceed forty per centum of the total value of all internal bills, promissory notes, and other similar documents then held by the Bank:

- (f) Discount, rediscount, buy, and sell Treasury bills of any Government, or bills issued by any local authority or public body in the United Kingdom or in New Zealand or other part of the British dominions, and in every such case maturing within three months after the date of their acquisition by the Bank:

- (g) Grant advances for fixed periods, not exceeding three months, against—

- (i) Gold coin or bullion, or documents relating to the shipment thereof:

- (ii) Securities issued by the New Zealand Government or by any local authority or public body in New Zealand or such other marketable securities having a ready sale in New Zealand as may from time to time be approved for the purpose by the Board:

- (iii) Any such bills of exchange, promissory notes, or other documents as are referred to in paragraphs (d), (e), and (f) of this subsection:

- (iv) One-name promissory notes of any bank carrying on the business of banking in New Zealand, with a maturity not exceeding fifteen days, and covered by any collateral security which the Reserve Bank is empowered to discount, or to accept as security for a loan or advance:

- (h) Buy and sell New Zealand Government securities or securities of the Government of the United

Kingdom, but so that the amount of the securities so held with an unexpired currency of more than three months shall not at any time within the period of four years immediately succeeding the date on which the Bank has become entitled to commence business exceed an amount equal to twice the paid-up capital of the Bank and its reserves, and shall not at any time thereafter exceed the paid-up capital of the Bank and its reserves:

- (i) Buy and sell currencies of any country other than New Zealand.
- (j) Undertake the issue and management of New Zealand Government loans and the loans of any local authority or public body in New Zealand; but it shall not be lawful for the Reserve Bank to underwrite any such loan:
- (k) Keep a register of inscribed stock on behalf of any local authority or public body having authority to issue inscribed stock:
- (l) Organize a clearing system:
- (m) Act as correspondent for any bank carrying on business outside New Zealand or act as the agent of any Reserve Bank or Central Bank or other bank or institution fulfilling the functions of a Reserve Bank:
- (n) Do any other banking business incidental to or consequential upon the provisions of this Act and not prohibited by this Act. " "
- (2) The Bank shall at all times make public the minimum rate at which it is prepared to discount or rediscount bills.

Restrictions upon the conduct of business by the Bank.

**14.** It shall not be lawful for the Bank to—

- (a) Issue bank-notes of a denomination less than ten shillings, except with the authority of the Governor-General in Council:
- (b) Engage in trade, or otherwise have a direct interest in any commercial, industrial, or similar undertaking:
- (c) Purchase its own shares or the shares of any other bank in New Zealand or elsewhere (except shares of the Bank for International Settlements) or grant loans on the security of any shares that the Bank is hereby prohibited from purchasing:

- (d) Make unsecured loans or advances:
- (e) Purchase or make advances on the security of real property, except so far as may be required to enable the Bank to conduct its business:

Provided that in the event of any claims of the Bank being in the opinion of the Board endangered, the Bank may secure itself on any real property of the debtor and may acquire such property, which shall, however, be resold as soon as practicable thereafter:

- (f) Pay interest on any moneys deposited with the Reserve Bank by any other bank pursuant to section forty-five hereof, or, except as hereinafter provided in this paragraph, pay interest on any other moneys placed on deposit or on current account with the Bank:

Provided that the Bank may pay interest to the New Zealand Government on Government funds held by the Bank outside New Zealand, at a rate lower by not less than one-half per centum per annum than the average rate earned by the Bank on all short-term funds held by it outside New Zealand:

- (g) Allow the renewal of maturing bills of exchange, promissory notes, or other similar documents, purchased or discounted by or pledged to the Bank:

Provided that in exceptional circumstances the Board of Directors may by resolution authorize not more than one renewal of any such bill, promissory note, or document as aforesaid:

- (h) Draw or accept bills payable otherwise than on demand:
- (i) Grant accommodation, either directly or indirectly, to the Treasury, or to any incorporated Department of State, or to any local authority or public body, by way of discounts, loans, advances, overdrafts, or otherwise, in excess of one-half of the revenue or estimated revenue for the year in the case of the Treasury, or one-fourth of their respective revenues or estimated revenues for the year in the case of any other Department of State, or of any local authority or public body as aforesaid:

Provided that nothing in this paragraph shall be construed to confer on the Treasury, or on

*Banking in New Zealand.*

any such Department of State, or on any local authority or public body, power to borrow moneys by way of bank overdraft or otherwise howsoever, or to extend any existing power.

*Issue of Bank-notes by Reserve Bank.*

Issue of  
bank-notes  
by Reserve  
Bank.

15. (1) On and after a date to be fixed by the Governor-General by Proclamation, being not earlier than six months after the publication of such Proclamation in the *Gazette*, the Reserve Bank shall have the right to issue bank-notes in New Zealand, and thereupon the authority of every other bank to issue bank-notes in New Zealand or to reissue the bank-notes of such bank in New Zealand shall cease and determine, anything to the contrary in any Act or in the charter of any such bank notwithstanding. On and after the date herein referred to the banks shall redeem their outstanding notes only in Reserve Bank notes or in subsidiary coin to the extent to which such coin is for the time being legal tender in New Zealand. A Proclamation shall not be issued under this section so as to take effect before at least seventy-five per centum of the capital of the Bank has been paid up.

(2) On the date proclaimed by the Governor-General in accordance with the last preceding subsection, or within such time thereafter as may be prescribed by the Governor-General in the same or in a later Proclamation, every bank carrying on business in New Zealand shall transfer to the Reserve Bank, in exchange for the equivalent value of bank-notes of the Reserve Bank, or for credit with that bank, all gold coin or bullion then held by it on its own account.

(3) For the purposes of the last preceding subsection the equivalent value of gold coin in bank-notes shall be the nominal value of such coin and the equivalent value of gold bullion in bank-notes shall be an amount computed at the price of three pounds seventeen shillings and tenpence halfpenny an ounce of the standard gold content (meaning thereby gold containing eleven-twelfths fine gold) of such bullion.

(4) Any profits that may be derived by the Reserve Bank from the sale of gold coin and bullion transferred to it by any bank pursuant to the foregoing provisions of this section shall be credited to the Public Account.

(5) On the expiration of a period of two years after the date when the right of issuing bank-notes has become vested in the Reserve Bank in accordance with the foregoing pro-

visions of this section, every other bank then carrying on business in New Zealand shall pay over to the Reserve Bank an amount equal to the value of its then outstanding notes issued or payable in New Zealand, and its liability in respect of such notes to the holders thereof shall thereupon be determined, and shall be deemed to have been assumed by the Reserve Bank.

(6) Any bank-note, whether issued by the Reserve Bank or any other bank, that is not presented for payment within forty years from the first day of April following the date of its issue, in the case of a bank-note issued by the Reserve Bank, or within forty years after the assumption by the Reserve Bank of liability in respect thereof, in the case of any other bank-note, shall on the expiration of that period be deemed not to be in circulation, and an amount equal to the value thereof shall thereupon be paid by the Reserve Bank into the Public Account to the credit of the Consolidated Fund as if such amount were unclaimed moneys within the meaning of the Unclaimed Moneys Act, 1908, and shall be dealt with as provided in that Act.

16. (1) On presentation at the Head Office of the Reserve Bank in Wellington of notes of the Bank to any amount not less than five thousand pounds, it shall be the duty of the Bank, in accordance with this section, to give in exchange for such notes sterling for immediate delivery in London.

Provisions  
for  
conversion  
of Reserve  
Bank notes.

(2) On presentation at the Head Office of the Reserve Bank in Wellington of gold or of sterling for immediate delivery in London, in either case to an amount not less than five thousand pounds, it shall be the duty of the Bank, in accordance with this section, to give notes of the Bank in exchange therefor.

(3) When the Bank pursuant to this section gives sterling in exchange for its notes, or gives notes in exchange for sterling or gold, the rate at which the exchange is effected shall be fixed by the Bank.

17. (1) Except as provided in the next succeeding section, it shall be the duty of the Bank at all times to maintain a minimum reserve of not less than twenty-five per centum of the aggregate amount of its notes in circulation and other demand liabilities.

Bank to  
maintain  
reserves in  
accordance  
with this  
section.

(2) For the purposes of this section the term "reserve" includes only—

(a) Gold coin and bullion in the unrestricted ownership of the Bank:



- (b) Sterling exchange, comprising—
  - (i) Deposits at the Bank of England:
  - (ii) British Treasury bills with an unexpired currency of not more than three months:
  - (iii) Bills of exchange payable in London, bearing at least two good signatures, with an unexpired currency of not more than three months:
- (c) Net gold exchange (as hereinafter defined in this paragraph) in the unrestricted ownership of the Bank, if such exchange is on a country the currency of which by law and in fact is convertible on demand at a fixed price into exportable gold. For the purposes of this paragraph the expression "net gold exchange" means—
  - (i) Balances standing to the credit of the Bank at the central bank of the country of origin of the currency in question:
  - (ii) Bills of exchange payable in a gold currency, maturing within three months, and bearing at least two good signatures:
 less any liabilities of the Bank in currencies other than New Zealand currency.

Provisions  
as to  
maintenance  
of reserve  
may be  
suspended.

18. (1) At the request in writing of the Board the Minister of Finance may suspend the requirements of the last preceding section as to the maintenance by the Bank of a minimum reserve. Such suspension shall be for such period, not exceeding thirty days, as may be specified by the said Minister, but, at the further request in writing of the Board, may be extended from time to time for further periods not exceeding fifteen days at any one time.

(2) If and whenever the reserve maintained by the Bank falls below the amount prescribed by the last preceding section (whether or not the requirements of that section have been suspended in accordance with the foregoing provisions of this section) the Bank shall be liable to pay to the Consolidated Fund a graduated tax computed on the amount of the deficiency as follows:—

- (a) When the reserve is less than twenty-five per centum but is not less than twenty per centum of the aggregate of the notes in circulation and other demand liabilities of the Bank, the tax shall be computed at the rate of one per centum per annum of the deficiency:

- (b) When the reserve is less than twenty per centum of the aggregate of the notes in circulation and other demand liabilities of the Bank as aforesaid, the tax shall be computed at the rate of one per centum per annum of the deficiency, increased by one and one-half per centum per annum in respect of every two and one-half per centum or part thereof by which the reserve falls below twenty per centum of such aggregate.

(3) All moneys payable to the Consolidated Fund pursuant to this section shall be recoverable from the Bank as a debt due to the Crown.

19. If and whenever the reserve maintained by the Bank falls below the amount prescribed by section seventeen hereof (whether or not the requirements of that section have been suspended), the Bank shall immediately add to its minimum current discount rate a percentage not less than the rate of the graduated tax referred to in the last preceding section:

Bank to increase minimum discount rate if reserve falls below the prescribed requirements.

Provided that the Minister of Finance may by writing under his hand suspend, in whole or in part and subject to such conditions as he thinks fit, the obligation imposed on the Bank by the foregoing provisions of this section. Any direction or authority given by the Minister for the purposes of this section may be at any time in like manner varied or revoked.

20. The tender of a note of the Bank, expressed to be payable on demand, shall be a legal tender to the amount expressed in such note at all times while the Bank continues to pay its notes in accordance with the provisions of section sixteen hereof.

Bank-notes to be legal tender in accordance with this section.

*New Zealand Government Accounts to be kept  
with Reserve Bank.*

21. (1) In this section the term “Government accounts” means the Public Account, and all accounts for the time being subject to Part X of the Public Revenues Act, 1926, but does not include any Imprest Account or other subsidiary account.

Public Account and other Government accounts to be kept at Reserve Bank.

(2) Within twelve months after the date on which the Reserve Bank is entitled to commence business, as provided in section nine hereof, all Government accounts shall be transferred to the Reserve Bank:

Provided that the Minister of Finance, with the concurrence of the Board, may, with respect to all Government

accounts or with respect to any one or more specified accounts, extend for such further period as he thinks fit, not exceeding six months, the time within which the transfer of those accounts to the Reserve Bank is required to be completed.

(3) The Bank shall after their transfer pursuant to this section keep such Government accounts, and shall receive all payment made to the credit thereof, and shall make all disbursements therefrom. In particular, and without limiting the foregoing provisions of this subsection, it shall be the duty of the Government to entrust to the Bank, and of the Bank to undertake or arrange, all the money, remittance, exchange, and banking transactions of the Government. No charge shall be made by the Bank for its services to the Government under this section.

(4) On the date on which any Government account is transferred to the Reserve Bank as aforesaid the provisions of any Act requiring the payment into any bank, whether specified or not, of any moneys payable to the credit of that account shall be deemed to be amended by the substitution in relation to such account of references to the Reserve Bank for the references therein to any other bank, whether specified therein by name or not.

Reserve Bank  
may be  
required to  
manage  
public debt.

22. The Reserve Bank if and when required by the Minister of Finance so to do shall keep the New Zealand Register of Inscribed Stock, and shall act as agent for the Treasury in the payment of interest and principal and generally in respect of the management of the public debt.

## PART II.

### MANAGEMENT OF THE RESERVE BANK.

Constitution  
of Board of  
Directors.

23. (1) There shall be a Board of Directors of the Bank, consisting of a Governor, a Deputy Governor, and seven other members, to be from time to time appointed or elected and to hold office in accordance with the following provisions of this Part of this Act.

(2) In addition to the members hereinbefore provided for, the Secretary to the Treasury shall, by virtue of his office, be a member of the Board, but shall not be entitled to vote at any meeting of the Board.

(3) The Board shall be charged with the general conduct of the business of the Bank, and, in particular, but without limiting the general authority hereby conferred, shall have

power, subject to the special conditions, if any, imposed by this Act, to deal with the following matters:—

- (a) Rates of discount and interest:
- (b) The general conditions and limits of the various categories of authorized business:
- (c) The internal regulation of the Bank:
- (d) The opening and closing of branches and agencies:
- (e) The organization of a clearing-house:
- (f) The approval of balance-sheets and of profit and loss accounts for presentation to general meetings:
- (g) The purchase and sale of real property required for the business of the Bank:
- (h) The form, denomination, design, and material of bank-notes; and also their manufacture, custody, issue, redemption, retirement, and cancellation.

24. The Governor and the Deputy Governor of the Bank shall be persons possessed of actual banking experience. While holding office as Governor and as Deputy Governor respectively they shall be required to devote the whole of their time to the duties of their respective offices, and, in particular, they shall not engage in any business on their own account or act as directors of any business or hold any interest in any other bank, whether in New Zealand or elsewhere.

Qualifications of Governor and Deputy Governor of Bank.

25. (1) The first Governor and Deputy Governor shall be appointed by the Governor-General in Council for a term of seven years and may be so appointed at any time after the commencement of this Act, and whether before or after the date of the incorporation of the Bank.

Appointment or election of Governor and Deputy Governor.

(2). On the expiry of the term of office of the first Governor and Deputy Governor respectively, or on the vacation of their office, by death or resignation or otherwise, before the time fixed for the expiry of such term, and thereafter from time to time as occasion may require, the Governor and Deputy Governor shall be appointed by the Governor-General in Council on the recommendation of the Board of Directors, each such officer to hold office, subject to the provisions of this Act, for a term of seven years.

(3) The Governor and Deputy Governor respectively shall, on the expiry of their term of office, be eligible for reappointment.

26. (1) The Governor and the Deputy Governor of the Bank shall be respectively entitled to receive out of the funds of the Bank such salary and allowances as may from time

Remuneration of Governor and Deputy Governor.

to time be fixed in that behalf by the Governor-General in Council. The amount of any such salary or allowances shall not be computed by reference to the earnings of the Bank, nor shall the Governor or Deputy Governor of the Bank be remunerated wholly or partly by any form of commission.

(2) Notwithstanding anything in the foregoing provisions of this section, all moneys payable as salary or allowances to the Governor or the Deputy Governor before the date on which the Bank is entitled to commence business shall be paid without further appropriation than this section out of the Consolidated Fund and shall be recoverable from the Bank as a debt due to the Crown at any time after the Bank has become entitled to commence business.

Duties of  
Governor and  
Deputy  
Governor.

27. (1) The Governor of the Bank shall, on behalf of the Board of Directors, be in permanent control of the administration of the assets and general business of the Bank, with authority to act and to give decisions in all matters which are not by this Act or by the rules of the Bank specifically reserved to the Board or to the general meeting of shareholders.

(2) In the event of the absence or incapacity of the Governor, from whatever cause arising, the Deputy Governor shall have and may exercise all the powers and functions of the Governor. The Governor may also at any time delegate to the Deputy Governor such of his powers and functions as he thinks fit.

(3) The fact that the Deputy Governor exercises any such powers or functions shall be conclusive proof of his authority so to do, and no person shall be concerned to inquire whether the occasion for his exercising the same has arisen or has ceased.

(4) In the event of the Governor and the Deputy Governor both being prevented from carrying out their duties, the Board of Directors shall appoint one of the other members of the Board or an officer of the Reserve Bank to act as the Governor of the Bank for the time being:

Provided that in the event of the absence from duty or other disability of the Governor and the Deputy Governor extending over a period exceeding one month, no person shall, after the expiration of one month, be appointed to act or continue to act as the Governor of the Bank except with the approval of the Governor-General in Council.

(5) Any officer of the Reserve Bank who is appointed pursuant to this section to act as the Governor of the Bank

shall while so acting be deemed to be a member of the Board, with all the powers and functions of the Governor.

28. (1) Three members of the Board of Directors (hereinafter referred to as State directors) shall from time to time be appointed by the Governor-General in Council.

Three members of Board to be appointed as State directors.

(2) Of the State directors first appointed under this section, one shall retire on the thirty-first day of July, nineteen hundred and thirty-six, one shall retire on the thirty-first day of July, nineteen hundred and thirty-eight, and the third shall retire on the thirty-first day of July, nineteen hundred and forty. The member so to retire in any year shall be determined by the Board by ballot.

(3) Except as hereinbefore provided in this section, every State director shall be appointed for a term of five years.

(4) If any State director dies or resigns or otherwise vacates his office before the expiry of the term for which he was appointed the Governor-General in Council shall appoint a suitable person in his stead, who shall hold office for the unexpired period of the term of office of the director so vacating his office.

(5) Any person retiring from office as a State director in accordance with this section may, unless expressly disqualified by this Act, be reappointed.

29. (1) Four members of the Board of Directors (hereinafter referred to as shareholders' directors) shall be appointed or elected in accordance with this section.

Four members of the Board to be shareholders' directors.

(2) Of the shareholders' directors, two shall be persons who are or have been actively engaged in primary industry, and two shall be persons who are or have been actively engaged in industrial or commercial pursuits.

(3) No person who is not a shareholder for the time being qualified to vote at general meetings of shareholders shall be appointed or elected as a shareholders' director.

(4) The first shareholders' directors shall be appointed by the Governor-General in Council to hold office in accordance with this section; and thereafter the shareholders' directors shall be elected for a period of five years by the shareholders at a general meeting.

(5) Of the shareholders' directors appointed by the Governor-General as hereinbefore provided, one shall retire on the thirtieth day of June in each year, the member to retire in any year being determined by the Board by ballot. The

first retirement under this section shall take place on the thirtieth day of June, nineteen hundred and thirty-six.

(6) Every person retiring from office as a shareholders' director shall, unless expressly disqualified by this Act, be eligible for election or re-election.

Casual  
vacancies  
in office of  
shareholders'  
directors.

30. If any shareholders' director dies or resigns, or otherwise vacates his office before the expiry of the term for which he was appointed or elected, the remaining members of the Board shall appoint a qualified person as his substitute, to hold office until the next ordinary general meeting, when a member shall be elected by the shareholders to hold office as a director for the unexpired period of the term of office of the director so vacating his office.

Directors of  
Reserve Bank  
not to act as  
directors of  
any other  
bank.

31. Not more than one member of the Board shall at any time be a director of any other bank carrying on business in New Zealand or elsewhere, but the acts of the Board shall not be invalidated by a breach of the provisions of this subsection. Any person who becomes a member of the Board in contravention of this section or who, being a member of the Board, becomes a director of any other bank in contravention of this section, may be removed by the Governor-General in Council from his office as a member of the Board.

General  
qualifi-  
cations of  
directors,  
including  
Governor and  
Deputy  
Governor.

32. (1) No person shall be appointed or elected, or shall continue to hold office as a member of the Board, whether as Governor, or Deputy Governor, or otherwise, who—

- (a) Is not a British subject by birth; or
- (b) Is or becomes a member of either House of Parliament; or
- (c) Is employed as a servant of the Crown in any Department of State; or
- (d) Is employed in the service of any other bank or, except as permitted by section thirty-one hereof, is a director of any other bank; or
- (e) Being a bankrupt within the meaning of the Bankruptcy Act, 1908, has not obtained an order of discharge under that Act.

(2) If any member of the Board becomes in the opinion of the Board permanently incapable of performing his duties, he may be removed from office by resolution of the Board approved by the Governor-General in Council.

(3) Nothing in this section shall apply to the Secretary to the Treasury in his capacity as an *ex officio* member of the Board.



33. The directors, other than the Governor and the Deputy Governor, shall be entitled to receive such fees and such allowances in respect of their expenses as may be determined by the Board and sanctioned at a general meeting of shareholders:

Fees and expenses of members of Board.

Provided that the aggregate amount of fees paid to the directors under this section shall not exceed four thousand pounds in any year.

*Executive Committee of Board of Directors.*

34. (1) There shall be an executive committee of the Board, consisting of the Governor, the Deputy Governor, and not less than one other member acting as such by direction of the Board or, in the absence of such direction, acting with the concurrence of the Governor.

Constitution and functions of executive committee.

(2) The Committee shall be competent to deal with any matter within the competence of the Board, but every decision of the committee shall be submitted to the Board for confirmation at its next meeting:

Provided that the committee shall have authority to alter the rate of discount only in cases of urgency.

(3) The executive committee shall act as a discount committee, and shall deal with discounts and credit limits within the general authority given by the Board, and shall also deal with such other matters as the Board of Directors may determine.

(4) The executive committee shall keep full minutes of its proceedings, which shall be submitted to the Board at its next meeting.

PART III.

ACCOUNTS, PROFITS, AUDITS, AND RETURNS.

35. The financial year of the Bank shall end on the thirty-first day of March.

Financial year.

36. After such provision as the Board thinks proper has been made for bad and doubtful debts, depreciation in assets, superannuation or retiring-allowances for the staff, and all such other matters as are usually provided for by banks, and after payment out of the net profits of a cumulative dividend of five per centum per annum on the paid-up capital, the surplus for each financial year shall be applied as follows:—

Distribution of profits.

(a) So long as the General Reserve Fund of the Bank is less than the paid-up capital of the Bank, one-half of the surplus shall be allocated to that fund,



and the residue shall be paid into the Public Account to the credit of the Consolidated Fund.

(b) If the General Reserve Fund is not less than the paid-up capital of the Bank, but is less than twice the paid-up capital, one-tenth of the surplus shall be allocated to that fund, and the residue shall be paid into the Public Account to the credit of the Consolidated Fund.

(c) If the General Reserve Fund is not less than twice the paid-up capital of the Bank, the whole amount of the surplus shall be paid into the Public Account to the credit of the Consolidated Fund.

Bank to  
furnish  
periodical  
statements  
of assets  
and  
liabilities.

37. (1) The Bank shall as soon as practicable after the close of business on Monday of each week make up and transmit to the Treasury a statement of its assets and liabilities as at the close of business on that day.

(2) Such statement shall be in the form in the Second Schedule hereto.

(3) A copy of every such statement shall be forthwith published in the *Gazette*.

Bank to  
furnish  
certified copy  
of annual  
accounts.

38. (1) Within three months after the close of each financial year the Bank shall also transmit to the Treasury a copy of its accounts for the year, signed by the Governor, the Deputy Governor, and the Chief Accountant of the Bank and certified by the auditors.

(2) A copy of the accounts so signed and certified shall be forthwith published in the *Gazette* and, if Parliament is then sitting, shall, within fourteen days after the receipt thereof by the Treasury, be laid before Parliament, or, if Parliament is not sitting, shall be laid before Parliament within fourteen days after the commencement of the next ensuing session thereof.

Annual  
return of  
share-  
holders.

39. The Bank shall also, within sixty days after the close of each financial year, transmit to the Treasury a list of the names and addresses of the shareholders of the Bank as at the close of the year, and of the number of shares then held by each shareholder.

Penalties  
for failure  
to furnish  
accounts, &c.

40. (1) If the Bank fails to comply with any of the requirements of the three last preceding sections, it shall be liable to a fine of five hundred pounds.

(2) Every director or officer of the Bank or other person who verifies any statement, account, or list required to be furnished to the Treasury pursuant to the said sections, or who is concerned in delivering or transmitting the same to

the Treasury, knowing the same to be false in any material particular, commits an offence and is liable to a fine of one hundred pounds.

41. (1) The Minister of Finance shall appoint two qualified accountants to be the first auditors of the Bank, who shall hold office as such until the first ordinary general meeting.

Appointment  
of auditors.

(2) Thereafter, two auditors shall be appointed annually at a general meeting of shareholders.

(3) No director or officer of the Bank shall during his tenure of office as such be qualified for appointment or to hold office as an auditor of the Bank, and no other person shall be qualified for any such appointment who would not be qualified for appointment as auditor of a company incorporated under the Companies Act, 1908, or any Act that may hereafter be passed in substitution for that Act.

#### PART IV.

##### LIQUIDATION.

42. The Bank shall not be at any time dissolved except pursuant to an Act of Parliament passed in that behalf.

Bank not to  
be dissolved  
except  
pursuant to  
statute.

43. Subject to the provisions of the last preceding section, the business of the Bank shall be wound up and the Bank shall be dissolved—

Compulsory  
liquidation.

(a) In the event of the determination at any time of the right of the Bank to issue bank-notes in New Zealand:

(b) If the Bank has suspended payment of any of its liabilities, without being able to give *vis major* as a cause therefor:

(c) If the Bank has lost more than half of its paid-up capital.

44. In the event of the winding-up of the bank and the realization of its assets, any surplus of assets over liabilities (not including its liability to shareholders in respect of shares held by them) shall be divided between the shareholders and the Government, in the proportion of one-third to the shareholders and two-thirds to the Government.

Distribution  
of assets in  
event of  
winding-up.

#### PART V.

##### OBLIGATIONS OF OTHER BANKS IN RELATION TO RESERVE BANK.

*Banks to maintain Balances with Reserve Bank.*

45. (1) As from a day to be appointed in that behalf by the Governor-General in Council, being not later than twelve

Other banks  
to maintain  
deposits with  
Reserve Bank  
in accordance  
with this  
section.

months after the day on which the Reserve Bank becomes entitled, pursuant to section nine hereof, to commence business, all other banks for the time being carrying on business in New Zealand shall be required at all times to maintain balances in the Reserve Bank in accordance with this section.

(2) The balance so to be maintained in the Reserve Bank by any Bank as aforesaid during any period shall be not less than the aggregate of seven per centum of its demand liabilities in New Zealand, other than bank-notes, and three per centum of its time liabilities in New Zealand, as shown in the last preceding monthly return furnished by that bank in accordance with the next succeeding section.

(3) Deposits with the Reserve Bank made by any bank in accordance with this section shall be made in gold or in sterling, or in notes of the Reserve Bank, or, with the consent of the Board given as to the whole or any part of such deposit, in any Government or other securities in which the Reserve Bank is authorized by this Act to invest its funds.

(4) If any bank knowingly makes default in complying with the requirements of this section it shall be liable to a fine equal to ten per centum per annum of the amount of the deficiency for each day on which there is a deficiency in the amount of the balance maintained by it with the Reserve Bank, and, except with the approval of the Board of the Reserve Bank, it shall not be lawful for such bank while any such deficiency exists to make any loan or to pay any dividend.

#### *Monthly Returns.*

Banks carrying on business in New Zealand to furnish monthly returns to Reserve Bank.

46. (1) A return made up to the close of business on the last Monday of every month, and signed by the manager and the accountant of the bank, or signed by other principal officers of the bank acting on their behalf, shall be sent by every bank for the time being carrying on business in New Zealand (other than the Reserve Bank) to the Head Office of the Reserve Bank at Wellington, within twenty-one days after such day, setting forth—

- (a) The amount of the demand liabilities of the bank in New Zealand:
- (b) The amount of the time liabilities of the bank in New Zealand:
- (c) The amount of the demand liabilities of the bank elsewhere than in New Zealand incurred in respect of its New Zealand business:

- (d) The amount of the time liabilities of the bank elsewhere than in New Zealand incurred in respect of its New Zealand business:
  - (e) The reserve balances held in the Reserve Bank:
  - (f) The overseas assets of the bank, in respect of its New Zealand business, held—
    - (i) In London; and
    - (ii) Elsewhere than in London:
  - (g) The amounts separately of gold coin and bullion and of subsidiary coin held by the bank in New Zealand:
  - (h) The total amount of its advances and discounts in New Zealand:
  - (i) The amount of Reserve Bank notes held by it:
  - (j) The amount (if any) of the bank's own notes issued in or payable in New Zealand, and in circulation.
- (2) A summary of the monthly returns, in a form to be approved by the Minister of Finance, shall be forthwith sent to the Treasury by the Reserve Bank for publication in the *Gazette*.
- (3) If any bank makes default in complying with the foregoing requirements of this section, or any of them, it shall be liable to a fine of one hundred pounds for every day during which such default continues.
- (4) If it appears from any monthly return that any bank has failed to maintain a balance in the Reserve Bank in accordance with the requirements of section forty-five hereof, it shall be competent for the Reserve Bank to call upon that bank to make such returns in addition to the returns required by this section as in the circumstances it deems necessary.
- (5) If in any case the Reserve Bank thinks fit, it may require any other bank to maintain with it a balance proportionate to its demand and time liabilities as disclosed in any return furnished under the last preceding subsection in lieu of its liabilities as disclosed in the monthly return furnished under subsection one of this section, and such bank shall thereupon be under an obligation to maintain such balance accordingly.
- (6) If the Reserve Bank has reason to believe or suspect that any bank has made a return that is incorrect in any material particular, or if any such bank fails to make a return when required so to do either by this Act or by the Reserve Bank acting under the authority of this Act, or if for any other reason it is in the opinion of the Board desir-

able in the public interest that an inspection be made, the Reserve Bank may authorize any officer of the Bank to make such inspection of the books and accounts of that bank as it may consider necessary.

(7) If any person, without lawful justification or excuse, the proof whereof shall lie on him, hinders, obstructs, or delays any person authorized by the Reserve Bank to make any inspection for the purposes of the last preceding subsection, in the conduct of such inspection, he shall be guilty of an offence and be liable on summary conviction to a fine of one hundred pounds.

## PART VI.

### MISCELLANEOUS.

General meetings and voting rights of shareholders.

47. (1) An ordinary general meeting of shareholders shall be convened by the Board once in every year, and shall be held not later than the thirty-first day of July in any year.

(2) Except as provided in section six hereof, every shareholder of the Bank who is a British subject ordinarily resident in New Zealand, and no other person, shall be entitled to vote at general meetings of the shareholders of the Bank.

(3) Every such shareholder shall at any such meeting be entitled to one vote for every share of which he has been the registered proprietor for not less than six months immediately preceding the date of the meeting:

Provided that no shareholder shall be entitled to more than five hundred votes under this subsection.

Provision for voting by proxy.

48. Every shareholder shall be entitled to transfer his right of voting at any general meeting to any other shareholder as his proxy.

Provided that no person shall be entitled at any time to exercise more than five hundred votes, whether in his own right or as proxy, or shall be competent to receive proxies purporting to authorize him to exercise more than five hundred votes in the aggregate, taking into account the number of votes to which he is entitled in respect of the shares held by him.

Recovery of fines imposed by this Act.

49. Except with respect to offences made punishable on summary conviction, all fines imposed by this Act shall be recoverable only by action in the Supreme Court in the manner prescribed by the Crown Suits Act, 1908; and no action therefor shall lie unless the same is commenced within two years after the time the offence is alleged to have been committed.

50. It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in the purchase of shares in the Reserve Bank, or to subscribe for any such shares:

Trustees may subscribe for or purchase shares of Reserve Bank.

Provided that no trustee shall be qualified to hold more than five hundred shares, either for the same or for different beneficiaries.

51. In the event of any conflict between this Act and the provisions of the Banking Act, 1908, or of any other Act relating to any bank or to the business of banking, the provisions of this Act shall prevail.

This Act to prevail over Banking Acts in event of conflict.

52. The Reserve Bank shall be exempt from public taxation (not including local rates) to the same extent as the Crown.

General exemption from taxation.

## SCHEDULES.

Schedules.

### FIRST SCHEDULE.

#### RULES OF THE RESERVE BANK OF NEW ZEALAND.

##### *General Meetings of Shareholders.*

1. (1) All matters to be discussed at the ordinary general meeting must be placed on the agenda.

(2) Motions to be proposed by shareholders must be communicated to the Board not later than thirty days before the date of the ordinary general meeting, accompanied by a statement of the arguments in support of them.

2. The ordinary general meeting shall deal with the following matters:—

(a) The annual accounts and the report of the Board:

(b) Appropriations to the General Reserve Fund, and to the special reserve funds, if any:

(c) The declaration of annual dividends:

(d) The election of directors and of auditors:

(e) The fees and allowances of the Board and of the auditors:

(f) Any proposals for the amendment of the rules:

(g) Any other matters of which notice has been duly given in accordance with the rules.

3. (1) Extraordinary general meetings shall be held as often as may be required, and shall be convened by the Board.

(2) The Board may convene an extraordinary general meeting whenever it thinks fit so to do, and shall convene such a meeting on the request in writing of shareholders, who, being qualified to vote at meetings of shareholders, represent at least one-quarter of the subscribed capital. Every such request shall be accompanied by the motions to be proposed, and by a statement of the arguments in support of them.

(3) An extraordinary general meeting convened at the request of shareholders as aforesaid shall be held within thirty days after the date when such request is received by the Board.

4. (1) Notice to attend a general meeting (whether ordinary or extraordinary) shall be forwarded to every shareholder by letter, addressed to him at his address appearing on the register of shareholders, and shall be despatched from the Head Office not later than twenty-one days before the date of the meeting. Every such notice shall specify—

- (a) The day and hour of the meeting:
- (b) The place of the meeting:
- (c) The agenda.

(2) In the case of the ordinary general meeting, the notice must be accompanied by a copy of the annual accounts and report.

(3) Notice of the time and place of the ordinary general meeting shall be published, at least twenty-one days before the date of such meeting, in the *Gazette* and also in such one or more newspapers as the Board may determine.

5. (1) At every general meeting of shareholders the Governor of the Bank, if present, shall be the chairman, and, in the absence of the Governor, the Deputy Governor shall be the chairman.

(2) In the event of the absence from any meeting of both the Governor and the Deputy Governor, the shareholders present shall elect another member of the Board to be the chairman of that meeting.

(3) At any general meeting the chairman shall not have a deliberative vote, but in the event of an equality of votes, he shall have a casting vote.

6. Except where otherwise provided, resolutions shall be adopted by a majority of the valid votes given by shareholders personally or by proxy.

7. Decisions of a general meeting of shareholders shall be binding upon all the shareholders of the Bank, whether present at that meeting or not.

*Proceedings of Board of Directors.*

8. (1) The Governor or Deputy Governor shall summon meetings of the Board of Directors as often as may be required, but not less frequently than once a month.

(2) The Governor shall also summon a special meeting of the Board at the request in writing of three or more of the members.

9. At all meetings of the Board the Governor or, in his absence the Deputy Governor, shall be the chairman.

10. (1) At meetings of the Board five members, of whom the Governor or Deputy Governor shall be one, shall form a quorum, and no business shall be transacted at any such meeting unless a quorum is present thereat.

(2) In the absence from any meeting of the Board of the Secretary to the Treasury any officer of his Department having authority to act in his place during his absence from office may attend such meeting in his stead, and while so attending shall be deemed to be a member of the Board.

(3) The fact that any such officer so attends and acts shall be conclusive proof of his authority so to do.

(4) The chairman of the Board shall have a deliberative vote, and, in the case of an equality of votes, shall have a casting vote also.

(5) Decisions of the Board on any proposal shall be in accordance with a majority of the valid votes given thereon.

*Shares.*

11. (1) The shares of the Bank shall be registered and transferable in the books of the Bank.

(2) The Bank shall decline to accept—

(a) Any transfer of shares except to a British subject who is ordinarily resident in New Zealand or who, having been so resident, is at the time of transfer temporarily out of New Zealand for the purposes of his business or for other sufficient reason; and

(b) Any transfer of shares that would increase the holding of any person beyond 500 shares.

(3) The Bank shall also be entitled, without assigning any reason, to decline to accept any person whomsoever as the transferee of any share.



12. Any premium obtained on any issue or sale of shares shall be added to the General Reserve Fund or to a special reserve fund of the bank.

*Accounts and Reports.*

13. Copies of the annual accounts and report shall be available for shareholders at the offices of the Bank.

**SECOND SCHEDULE.****STATEMENT OF ASSETS AND LIABILITIES OF RESERVE BANK OF NEW ZEALAND.**

<i>Liabilities.</i>	<i>Assets.</i>
1. Paid-up capital.	8. Reserve—
2. General Reserve Fund.	(a) Gold.
3. Bank-notes.	(b) Sterling exchange.
4. Demand liabilities—	(c) Gold exchange.
(a) State.	9. Subsidiary coin.
(b) Banks.	10. Discounts—
(c) Other.	(a) Commercial and
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Proportion of reserve (No. 8 less No. 6) to notes and other demand liabilities:           per cent.

The Reserve Bank of New Zealand Act, 1933, was amended by the Finance Act, 1934. A reprint of Part I of the amending enactment, containing provisions affecting the Reserve Bank of New Zealand, follows:—

**PART I.****PROVISIONS AFFECTING THE RESERVE BANK OF NEW ZEALAND.**

This Part to be read with Reserve Bank Act.

2. This Part of this Act shall be read together with and deemed part of the Reserve Bank of New Zealand Act, 1933 (hereinafter in this Part referred to as the principal Act).

3. Whereas by subsection three of section twenty-nine of the principal Act it is provided that no person who is not a shareholder for the time being qualified to vote at general meetings of shareholders shall be appointed or elected as a shareholders' director: And whereas by subsection three of section forty-seven of the principal Act shareholders have no voting powers except in respect of shares of which they have been registered proprietors for not less than six months: And whereas on the date on which the first appointment of shareholders' directors was made there were no shareholders who had been registered as proprietors of their shares for the aforesaid period of six months, and it is desirable that any doubt that may exist as to the validity of the appointment of such directors should be removed: Be it therefore enacted as follows:—

Validating the appointment of shareholders' directors of Reserve Bank.

The several shareholders' directors of the Reserve Bank of New Zealand, appointed by the Governor-General by Order in Council dated the nineteenth day of May, nineteen hundred and thirty-four, shall be deemed to have been validly appointed as such on the said date, and the Board of Directors of the said Bank shall be deemed to have been validly constituted on that date.

4. Whereas by section sixteen of the principal Act the Reserve Bank is obliged, within the limits of that section, to give sterling for immediate delivery in London in exchange for notes of the Bank, and to give notes of the Bank in exchange for sterling for immediate delivery in London, the rate of exchange in any such transaction to be fixed by the Bank: And whereas a definite relationship between the currency of New Zealand and sterling has not been fixed by statute: And whereas it is advisable that any depreciation of the assets of the Reserve Bank (expressed in the currency of New Zealand) due to the fixation by statute at any time hereafter of a definite relationship between the currency of New Zealand and sterling or due to any alteration of the rate of exchange theretofore made by the Reserve Bank should be charged against the Consolidated Fund, and that any appreciation of the assets of the Reserve Bank (expressed in the currency of New Zealand) due to such fixation or to any such alteration of the rate of exchange as aforesaid should be credited to the Consolidated Fund: Be it therefore enacted as follows:—

Any appreciation or depreciation of assets of Reserve Bank, due to any alteration that may hereafter be made in exchange rate while value of local currency not fixed by statute in terms of sterling, to be credited to or borne by Consolidated Fund.

(1) The Minister of Finance shall, from time to time, without further appropriation than this section, pay to the

Reserve Bank, out of the Consolidated Fund, an amount equal to the amount of any depreciation of the assets of the Reserve Bank (expressed in the currency of New Zealand) due to the fixation by statute at any time hereafter of a definite relationship between the currency of New Zealand and sterling, or due to any alteration of the rate of exchange that may theretofore be made by the Reserve Bank.

(2) The Reserve Bank shall from time to time pay into the Consolidated Fund an amount equal to the amount of any appreciation of the assets of the Reserve Bank (expressed in the currency of New Zealand) due to the fixation by statute at any time hereafter of a definite relationship between the currency of New Zealand and sterling, or due to any alteration of the rate of exchange that may theretofore be made by the Reserve Bank.

Provisional amendment of New Zealand Loans Act, 1932, to become effective if and when Reserve Bank acts as Registrar of Inscribed Stock.

5. Whereas by section twenty-two of the principal Act it is provided that the Reserve Bank, if and when required by the Minister of Finance so to do, shall keep the New Zealand Register of Inscribed Stock: And whereas the giving effect to this provision will necessitate the modification of certain provisions of the New Zealand Loans Act, 1932, and it is desirable that provision be now made for such modifications: Be it therefore enacted as follows:—

(1) If the Minister of Finance, pursuant to the authority conferred on him by section twenty-two of the principal Act, requires the Reserve Bank to keep the New Zealand Register of Inscribed Stock, he shall forthwith cause notice of such requirement and of the date on which it is intended to take effect to be published in the *Gazette*.

(2) On the date on which such requirement takes effect the New Zealand Loans Act, 1932, shall be deemed to be amended as follows:—

(a) By omitting from section thirty-four thereof the words "The person for the time being holding the office of Secretary to the Treasury," and substituting the words "The Reserve Bank of New Zealand":

(b) By repealing section thirty-five thereof:

(c) By omitting from section thirty-eight thereof the words "the Registrar," and substituting the words "an officer of the Reserve Bank of New Zealand purporting to act in the course of his duties as such":

(d) By repealing section fifty-one thereof and substituting the following new section:—

"51. The Registrar shall from time to time furnish to the Treasury certified statements as to the amount of stock inscribed under this Part of this Act, with such other particulars relating thereto as the Treasury may require, and the Audit Office shall for all purposes accept such certified statements as correct."

6. Section thirteen of the principal Act is hereby amended by repealing paragraphs (d), (e), and (h) of subsection one, and substituting the following paragraphs respectively:—

Section 13 of principal Act amended.

"(d) Discount, rediscount, buy, and sell bills of exchange, promissory notes, and other documents arising out of *bona fide* commercial transactions (including *bona fide* transactions in relation to the production, marketing, and sale of live-stock and primary products), and bearing two or more good signatures and maturing either within one hundred and twenty days after the date of the document or not later than ninety days after sight:

"(e) Discount, rediscount, buy, and sell bills of exchange, promissory notes, and other documents arising out of *bona fide* transactions in relation to the production, marketing, and sale of live-stock and primary products, and bearing two or more good signatures and maturing within six months after the date of their acquisition by the Bank:

"Provided that the Bank shall not at any time acquire any bills or other documents under the authority of this paragraph if by the acquisition of such documents the total value of all documents acquired by the Bank under the authority of this paragraph and then held by it would exceed five per centum of the total value of the assets of the Bank:

"(h) Buy and sell New Zealand Government securities or securities of the Government of the United Kingdom, but so that the amount of the securities so held with an unexpired currency of more than three months shall not at any time exceed an amount equal to three times the paid-up capital of the Bank and its reserves."

7. For the purposes of section seventeen and of paragraph (d) of subsection one of section thirteen of the principal Act a bill of exchange payable at any place out of

Requirement of two good signatures for certain classes of bills of exchange.

New Zealand shall be deemed to bear two good signatures if it bears one such signature and is the subject of an irrevocable undertaking to accept, given to the Bank by any person, firm, or corporation whose signature to the acceptance of such Bill would constitute a good signature.

Section 16 of principal Act amended.

§. Section sixteen of the principal Act is hereby amended by omitting from subsection one and also from subsection two the words "five thousand pounds," and in each case substituting the words "one thousand pounds."

Section 29 of principal Act amended.

9. Section twenty-nine of the principal Act is hereby amended by adding to subsection three the following words: "If any shareholders' director ceases at any time to be a shareholder of the Bank he shall thereupon vacate his office as a director."

Date of first general meeting of shareholders.

10. Section forty-seven of the principal Act is hereby amended by adding to subsection one the following proviso:—

"Provided that the first ordinary general meeting of shareholders may be held at any time not later than the thirty-first day of July, nineteen hundred and thirty-five."

Directors of Reserve Bank may in any year authorize payment in advance to Consolidated Fund in respect of profits for that year.

11. If in any financial year the Board of Directors of the Reserve Bank is satisfied that there will be a surplus available for distribution at the end of the year, in accordance with the provisions of section thirty-six of the principal Act, it may, at the request of the Minister of Finance, authorize the payment in advance to the Consolidated Fund of the whole or any part of the amount which, in its opinion, will become payable to the Consolidated Fund in respect of that year pursuant to the said section.

Banks Indemnity (Exchange) Act, 1932-33, repealed as on 1st August, 1934.

12. The Banks Indemnity (Exchange) Act, 1932-33, shall be deemed to be repealed on the first day of August, nineteen hundred and thirty-four (being the date on which the Reserve Bank is entitled to commence business).

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